

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(1) INTRODUCTION/801. Meaning of 'prize'.

PRIZE (

1. THE LAW OF PRIZE

(1) INTRODUCTION

801. Meaning of 'prize'.

'Prize' is the term applied to a ship¹ or goods² captured by the maritime force of a belligerent at sea or seized in port³. The term has been extended by statute to aircraft and goods carried in them⁴, and save for certain exceptions⁵, the law relating to prize applies in relation to aircraft and goods carried in them as it applies in relation to ships and goods carried in them, and it so applies notwithstanding that the aircraft is on or over land⁶.

1 'Ship' includes an unnavigable ship (*The Hermes* [1951] P 347 at 372 per Lord Merriman P), but not a total wreck (*The Giuseppe Mazzini* [1949] 2 All ER 1094 at 1097). It also includes lighters, rafts, tugs and boats: *The Anichab* [1919] P 329 (affd on another point [1922] 1 AC 235, PC); *Re Certain Craft captured on the Victoria Nyanza* [1919] P 83. See also PARA 803 note 4 post.

2 'Goods' includes unfinished ships in the course of construction: *Schiffahrt-Treuhand GmbH v HM Procurator-General* [1953] AC 232, [1953] 1 All ER 364, PC. See also PARA 803 note 4 post.

3 *The Roumanian* [1915] P 26; affd [1916] 1 AC 124, PC.

4 See the Prize Act 1939 s 1(1). The Act now extends to the United Kingdom, the Channel Islands, the Isle of Man, the Commonwealth of Australia, and the Dominion of New Zealand, Newfoundland and every colony, every British protectorate, and every territory under the administration of the United Kingdom, Australia or New Zealand, India (subject to its national law), and, to the extent of the Crown's prize jurisdiction there, every other country or territory in which for the time being the Crown has such jurisdiction: see s 4(1) (amended by the Statute Law (Repeals) Act 1995); Indian Independence Act 1947 s 18(1); British North America Act 1949 s 1, Sch; India (Consequential Provision) Act 1949 s 1 (amended by the Statute Law (Repeals) Act 1976). All enactments relating to prize, as amended by the Prize Act 1939, are extended to every British protectorate, every trust territory of the United Kingdom, Australia or New Zealand and (to the extent of the Crown's prize jurisdiction) to every other country and territory in which the Crown has such jurisdiction: see s 4(2). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

5 The provisions contained in the Naval Prize Act 1864 ss 30, 34, 35, 37-39, 46, 48; Prize Act 1939 s 1(3), Schedule Pt II; Prize Act 1948 s 9(2); Supreme Court Act 1981 s 152(4), Sch 7.

6 Prize Act 1939 s 1(1). Apart from *The Yankee Clipper* (1945) 1 Lloyd Pr Cas NS 401 where cargo in an aircraft was condemned as prize, there is no reported decision concerning aircraft; and the application of existing prize law to aircraft would seem to present certain difficulties, eg in such matters as capture, unneutral service and blockade.

UPDATE

801 Meaning of 'prize'

NOTE 5--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(1) INTRODUCTION/802. When prize is a droit of the Crown.

802. When prize is a droit of the Crown.

Enemy ships or goods, and in certain circumstances neutral ships or goods¹, when captured² at sea by one of Her Majesty's ships are droits of the Crown³.

¹ See PARA 812 post.

² A ship may be said to be captured when it submits to the will of the captor. No formal notice is required: *The Pellworm* [1922] 1 AC 292 at 302, PC; *Netherlands American Steam Navigation Co v HM Procurator General* [1926] 1 KB 84, CA.

³ *The Adjutant* [1919] P 41. Ships intercepted at sea and sent into a British port are droits of the Crown: *The Derfflinger*, *The Forde* [1919] P 264.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(1) INTRODUCTION/803. When prize is a droit of Admiralty.

803. When prize is a droit of Admiralty.

If ships or goods which are liable to condemnation are seized¹ in a port² they will be condemned as droits of Admiralty. It is an essential condition to such a decree of condemnation that the ship should have entered the port voluntarily, or by stress of weather and not from a cause connected with warlike operations or knowledge that a state of war existed³.

Ships or goods⁴ captured by a ship other than a ship of war⁵, or by a force on land⁶, are also droits of Admiralty.

¹ In the case of the seizure of goods in a port, a letter giving notice of detention has been held to be sufficient seizure: *The Roumanian* [1916] 1 AC 124 at 131, PC.

² Seizure of the ship itself is not essential provided it is within the limits of the port which has been seized and occupied by the maritime force: *Schiffahrt-Treuhand GmbH v HM Procurator-General* [1953] AC 232, [1953] 1 All ER 364, PC. 'Port' means the place where ships are in the habit of coming for the purpose of loading or unloading and not the surrounding territorial waters: cf *The Giuseppe Mazzini* [1949] 2 All ER 1094, where a ship, scuttled in deep water to avoid capture with the harbour, was held to have been captured with the capture of the harbour. As to the goods seized within a port see PARA 807 post. As to ports generally see PORTS AND HARBOURS.

³ *The Maria Françoise* (1806) 6 Ch Rob 182; *The Abonema*, *The Albania* [1919] P 41.

⁴ For the purposes of the Prize Acts 1864 to 1944 and the Prize Court Rules 1939, SR & O 1939/1466, 'ship' includes vessel and boat, with the tackle, furniture and apparel of the ship, vessel or boat (Naval Prize Act 1864 s 2), and includes hovercraft (Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A (as amended)). See also PARA 801 note 1 ante. For the purposes of the Prize Acts 1864 to 1944 and the Prize Court Rules 1939, SR & O 1939/1466, 'goods' includes all such things as are by the course of Admiralty and law of nations the subject of adjudication as prize, but does not include ships, and does not include aircraft which are not part of the cargo of a ship: Naval Prize Act 1864 s 2 (definition amended by the Prize Act 1939 s 1(2), Schedule Pt I). See also PARA 801 note 2 ante. The Naval Prize Act 1864 ss 1-30 which relate to ships and aircraft extend and apply to goods taken as prize on board ship or aircraft, and the court may direct such goods to be

unladen, inventoried, and warehoused: s 31 (amended by the Prize Act 1939, s 1(2), Schedule, Pt 1). The following Acts comprise the Prize Acts 1864 to 1944: the Naval Prize Act 1864, the Prize Courts Act 1894, the Prize Courts (Procedure) Act 1914, the Prize Courts Act 1915, the Naval Prize (Procedure) Act 1916, the Prize Act 1939, and the Prize Salvage Act 1944: Prize Courts (Procedure) Act 1914 s 2; Prize Courts Act 1915 s 5; Naval Prize (Procedure) Act 1916 s 3; Prize Act 1939 s 5; Prize Salvage Act 1944 s 3. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post. The definitions apply for the purposes of those rules by virtue of Ord 1 r 3. Unless the contrary intention appears, those rules relative to ships and aircraft extend and apply, with the necessary changes, to goods and freight due or to grow due, and consequently 'ship' or 'aircraft' in those rules includes 'goods' and 'freight': Ord 1 r 2.

5 See the Naval Prize Act 1864 ss 34, 39. These provisions do not apply to aircraft: Prize Act 1939 s 1(3), Schedule Pt II.

6 *The Rebeckah* (1799) 1 Ch Rob 227; *The Roumanian* [1916] 1 AC 124, PC; *The Anichab* [1921] P 218.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(1) INTRODUCTION/804. Destination of droits.

804. Destination of droits.

Droits of Admiralty pass to the Crown in its office of Lord High Admiral and are paid into the Exchequer¹. Formerly it was the custom for a grant of droits of the Crown or droits of Admiralty, or a proportionate part of them, to be made to the actual captors, but this prerogative right has been abolished².

1 By an Order in Council dated 6 March 1665 (see *The Rebeckah* (1799) 1 Ch Rob 227 at 230), the proceeds of droits of Admiralty were granted to the Lord High Admiral (see *The Maria Françoise* (1806) 6 Ch Rob 282), but reverted to the Crown when the office of Lord High Admiral was put into commission (*R v Forty-nine Casks of Brandy* (1836) 3 Hag Adm 257 at 278). Droits of Admiralty or droits of or forfeitures to the Crown in a British possession, when condemned by a court of a British possession in exercise of its jurisdiction, are, save as otherwise provided by any other Act, to be notified, accounted for and dealt with in such manner as the Treasury directs, unless directed by Order in Council to form part of the revenues of that possession: see the Colonial Courts of Admiralty Act 1890 s 8.

2 Prize Act 1948 s 9(1) (repealed). As to the abolition of this prerogative right to grant prize bounty see PARA 846 post. As to the power of a prize court to reserve the prize to the Crown in the case of misconduct by the captors see the Naval Prize Act 1864 s 37 (amended by the Statute Law Revision Act 1893; and the Defence (Transfer of Functions) (No 1) (Order) 1964, SI 1964/488, art 2, Sch 1 Pt 1). The Naval Prize Act 1864 s 37 (as amended) does not apply to aircraft or goods carried in them taken as prize: Prize Act 1939 s 1(3), Schedule Pt II. For the meaning of 'goods' see PARA 803 note 4 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(1) INTRODUCTION/805. Prize and booty distinguished.

805. Prize and booty distinguished.

Prize differs from booty in that prize is taken by a maritime force¹, and booty by a land force. There is, however, a species of booty which consists of goods belonging to the enemy state or to a public trading company of the enemy exercising powers of government which are taken in a fortress or possession on land². Booty may also be a ship taken in waters defended by or belonging to a fortress or possession³. In respect of these things a British prize court has jurisdiction as if they were captured at sea⁴.

1 *Re Genoa and its Dependencies* (1820) 2 Dods 444.

2 See the Naval Prize Act 1864 s 34, which does not apply in relation to aircraft or goods carried in them taken as prize: Prize Act 1939 s 1(3), Schedule Pt II.

3 See the Naval Prize Act 1864 s 34; and note 2 *supra*.

4 See *ibid* s 34; and note 2 *supra*. A ship taken by land expedition within the meaning of s 34 is to be proceeded against, as far as possible, in the same manner as in the case of any other ship captured as prize: Prize Court Rules 1939, SR & O 1939/1466, Ord 31. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post. As to other matters to which the jurisdiction extends see PARA 848 post. See also SHIPPING AND MARITIME LAW vol 93 (2008) PARA 89; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 814.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(1) INTRODUCTION/806. Law administered by the Prize Court.

806. Law administered by the Prize Court.

The law administered by the Prize Court¹ is international law which originates in the practice and usage long observed by civilised nations in their relations with each other or in express international agreement². The court is bound by the statutes of the United Kingdom, but not by proclamations or Orders in Council³ if not in accordance with international law, except where they have been validly issued by virtue of a statute or where they amount to a mitigation of the rights of the Crown in favour of the enemy or neutrals, as the case may be⁴.

It cannot be assumed that any executive order is contrary to law in the absence of a decision in the Prize Court. If the order is acquiesced in and not declared to be illegal, it will be evidence by which international law and usage may be established⁵.

1 As to the Prize Court see PARA 847 et seq post.

2 *The Zamora* [1916] 2 AC 77 at 91, PC; *France Fenwick Tyne and Wear Co Ltd v Procurator General, The Prins Knud* [1942] AC 667 at 678, [1942] 2 All ER 453 at 457, PC.

3 Her Majesty in Council has power to make Orders in Council for the better execution of the Naval Prize Act 1864, and such orders must be laid before both Houses of Parliament: see ss 53, 54 (s 54 amended by the Statute Law (Repeals) Act 1986).

4 *The Zamora* [1916] 2 AC 77 at 97-98, PC; *The Oscar II* [1920] AC 748 at 754, PC; *The Falk etc* [1921] 1 AC 787 at 800, PC.

5 *The Zamora* [1916] 2 AC 77 at 97-98, PC.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(i) General/807. Where capture is lawful.

(2) VALIDITY OF CAPTURE

(i) General

807. Where capture is lawful.

A ship or goods may be lawfully captured as prize at sea¹ or within the land² or sea limits of a port³, or on inland lakes⁴ and rivers⁵; and the capture of an enemy ship within the territorial waters⁶ of a neutral state, although a breach of neutrality⁷, is lawful as between enemy belligerents⁸. A claim for violation of neutrality must be made by the neutral state whose rights

have been infringed⁹, but whereas an order may be made for the release of an enemy ship, a claim for the value of a ship destroyed cannot be maintained¹⁰.

Enemy ships in British ports at the commencement of hostilities will be detained¹¹. An order for condemnation will be made only in the absence of a reciprocal agreement¹².

1 *The Two Friends* (1799) 1 Ch Rob 271.

2 *The Roumanian* [1916] 1 AC 124, PC; *The Eden Hall* [1916] P 78; *The Achilles* [1917] P 218; *Schiffahrt-Treuhand Gmb v HM Procurator-General* [1953] AC 232, [1953] 1 All ER 364, PC. 'Land' includes beaches: *The Anichab* [1919] P 329; affd on another point [1922] 1 AC 235, PC.

3 *The Bellaman, The Agostino Bertani* [1948] 2 All ER 679. Some extension of the sea limits may be made where the ship has been deliberately scuttled in deep water to prevent its capture with the port: *The Giuseppe Mazzini* [1949] 2 All ER 1094.

4 *Re Certain Craft captured on the Victoria Nyanza* [1919] P 83; *The Kingani* (1920) 2 Ll L Rep 8.

5 *The Konigsberg* (1920) 2 Ll L Rep 7; *The Somali* (1920) 2 Ll L Rep 8; *Re Enemy Craft captured on the River Tigris* (1922) 9 Ll L Rep 544.

6 *The Twee Gebroeders* (1800) 3 Ch Rob 162; *The Vrow Anna Catharina* (1803) 5 Ch Rob 15; *The Anna* (1805) 5 Ch Rob 373. See also 2 Oppenheim's International Law (7th Edn) 753-757. For the power of the High Court to order restoration of prize captured in violation of British neutrality and subsequently brought within British jurisdiction see the Foreign Enlistment Act 1870 s 14; and PARA 808 post.

7 It is provided the passage is innocent. On the authority of *The Altmark* (1940, unreported), no claim may be made by the neutral power if the enemy ship has been guilty of a hostile act while within the neutral jurisdiction: see Colombos's Law of Prize (3rd Edn) 122-123.

8 *The Achaia* [1916] 2 AC 198n, PC; *The Bangor* [1916] P 181 at 185; *The Dusseldorf* [1919] P 245 (on appeal [1920] AC 1034 at 1037, PC).

9 *The Dusseldorf* [1920] AC 1034, PC.

10 The neutral state is entitled to restitutio in integrum, not to reparation. Consequently neither damages nor the value of the lost ship are recoverable where such loss is not attributable to the captor's misconduct: *The Valeria* [1920] P 81; affd [1921] 1 AC 477, PC. However, if the captor has obtained control of the ship by means of a requisitioning order under which the ship's appraised value has been substituted for the ship itself, then on the subsequent loss of the ship the neutral state may recover its appraised value: *The Pellworm* [1922] 1 AC 292, PC.

11 *The Chile* [1914] P 212.

12 See the Prize Court Rules 1939, SR & O 1939/1466, Ord 28 r 1; and see *The Pomona* [1943] P 24, [1943] 1 All ER 408. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(i) General/808. Restoration of illegal prize captured within neutral British jurisdiction.

808. Restoration of illegal prize captured within neutral British jurisdiction.

If, during a war in which Her Majesty may be neutral, any ships, goods or merchandise are captured within Her Majesty's territorial jurisdiction in violation of the neutrality of the realm, or are captured by any ship fitted out or dispatched contrary to certain provisions¹, and those goods are brought within the limits of the Crown's jurisdiction by any person with knowledge that they were prize of war illegally captured, the original owner, his agent or a person authorised by his government may apply to the High Court² for seizure and detention of the prize, and, on due proof of the facts, the court must order the restoration of the prize³.

1. See the provisions of the Foreign Enlistment Act 1870: see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARAS 412-415.

2. The jurisdiction of the Court of Admiralty under the Foreign Enlistment Act 1870 is now exercised by the High Court: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 138.

3. Ibid s 14. The order for restoration of prize must be executed in the same manner and subject to the same right of appeal as any order made in the ordinary jurisdiction of the court, and the court may make all provisional orders, and, if the prize is perishable, orders for sale etc, as may be made in the exercise of that jurisdiction: see s 14.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(i) General/809. When capture is lawful.

809. When capture is lawful.

Capture is lawful from the outbreak of war¹, the exact moment of which is usually stated in the declaration of war by the belligerent power², until the final termination of the war, which is not necessarily synonymous with the total cessation of hostilities unless accompanied by a declaration on the part of the victorious power that the war is ended³. Days of grace in order to depart were not accorded to enemy ships in British ports at the commencement of the 1939-45 war⁴.

1. A ship or goods seized before the outbreak of war may in some cases be treated as prize on the outbreak of war if the original seizure was made in anticipation of the outbreak: see *The Sado Maru* [1947] P 17, [1947] 1 All ER 430.

2. *The Jurko Topic* (1942) 1 Lloyd Pr Cas NS 89 at 92.

3. *Schiffahrt-Treuhand GmbH v HM Procurator-General* [1953] AC 232 at 257 et seq, [1953] 1 All ER 364 at 367 et seq, PC. Capture in prize is lawful, even though a general armistice has been declared: *Schiffahrt-Treuhand GmbH v HM Procurator-General* supra at 264, and at 373-374. When war is carried on by allies the unconditional surrender of one cannot protect it against the right of seizure so long as active hostilities are continued by another ally, unless the victor consents to abrogate his right: *Schiffahrt-Treuhand GmbH v HM Procurator-General* supra at 266 and at 374. As to war generally see WAR AND ARMED CONFLICT.

4. *The Pomona* [1943] P 24, [1943] 1 All ER 408.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/810. Enemy ships which are lawful prize.

(ii) Capture of Ships

810. Enemy ships which are lawful prize.

With certain exceptions¹ enemy ships are lawful prize. The enemy character of a ship is generally determined as against its owners by its flag², but a ship which is under the direction and control of the enemy will be deemed to be an enemy ship notwithstanding the fact that it is owned by a company incorporated in a neutral country or in the United Kingdom and is entitled to fly the flag of that country or of the United Kingdom³.

Neutrals are entitled to purchase private enemy merchant ships in a neutral port, and, if the transaction is complete and without reservation, it stands and the ship is thereafter neutral; but a ship which is or has been a portion of the armed forces of a belligerent cannot by a mere private transaction be placed beyond the reach of capture⁴.

Claims of neutrals based on special proprietary rights, such as liens⁵, pledges⁶, mortgages⁷, insurance⁸ or other security, not amounting to full legal ownership in the ship, are disregarded by the Prize Court⁹.

1 For the exceptions see PARA 811 post.

2 *The Vrow Elizabeth* (1803) 5 Ch Rob 2; *Lever Bros and Unilever NV v HM Procurator General, The Unitas and Cargo* [1950] AC 536 at 552, [1950] 2 All ER 219 at 223, PC. Exceptions to the rule may exist where the enemy flag is flown under duress or by a ship belonging to a national of a country which has no maritime flag of its own (*Lever Bros and Unilever NV v HM Procurator General, The Unitas and Cargo* supra at 558 and at 227), or where the ship is temporarily removed in unusual circumstances from the register of a friendly country (*The Inginer N Vlassopol* (1951) 1 Lloyd Pr Cas NS 307 at 333).

3 *The Hamborn* [1919] AC 993 at 996-997, PC. This principle is not applicable in favour of a ship under the direction or control of a neutral or friendly owner in a case where his ship is captured flying the enemy flag: *The Unitas* [1948] P 205 at 214-215, [1948] 1 All ER 421 at 429-430; affd on appeal sub nom *Lever Bros and Unilever NV v HM Procurator General, The Unitas and Cargo* [1950] AC 536, [1950] 2 All ER 219, PC.

4 *The Edna* [1921] 1 AC 735 at 740, 742, PC; *The Tommi, The Rothersand* [1914] P 251.

5 As to lien generally see LIEN.

6 As to pledges generally see PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 1 et seq.

7 As to mortgages generally see MORTGAGE vol 77 (2010) PARA 101 et seq.

8 As to insurance generally see INSURANCE.

9 *The Marie Glaeser* [1914] P 218; *The Konsul Hendrik Fisser* (1940) 1 Lloyd Pr Cas NS 16; *The Christophe Von Doornum* (1940) 1 Lloyd Pr Cas NS 49. As to the Prize Court see PARA 847 et seq post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/811. Enemy ships which are not lawful prize.

811. Enemy ships which are not lawful prize.

The classes of enemy ships which are not subject to capture and condemnation as lawful prize are: (1) hospital ships¹; (2) vessels employed exclusively in a coast fishery² and small craft engaged in local trade³; (3) ships employed in a religious, scientific or philanthropic mission⁴; and (4) ships employed or about to be employed in the conveyance of exchanged prisoners of war, namely 'cartel ships'⁵.

1 See the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmd 550), arts 22, 24-27, set out in the Geneva Conventions Act 1957, ss 1, 7, Sch 2. See also *The Ophelia* [1915] P 129; on appeal [1916] 2 AC 206, PC. As to the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 421.

2 See the International Convention relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime War (Hague Convention XI) (The Hague, 18 October 1907; TS 14 (1910); Cd 5118) art 3. See *The Berlin* [1914] P 265.

3 See the International Convention relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime War (Hague Convention XI) art 3. See also *The St Tudno* [1916] P 291; *The Germania* [1917] AC 375,

PC; *Procurator in Egypt v Deutsches Kohlen Depot Gesellschaft* [1919] AC 291, PC; *The Anichab* [1919] P 329 (affd on another point [1922] 1 AC 235, PC).

4 See the International Convention relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime War (Hague Convention XI) art 4. See also *The Paklat* (1915) 1 Br & Col Pr Cas 515.

5 *The Daifjie* (1800) 3 Ch Rob 139.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/812. Neutral ships which are lawful prize.

812. Neutral ships which are lawful prize.

A neutral ship which is guilty of unneutral service¹ or which breaks or attempts to break a blockade² is liable to condemnation as lawful prize, as is a ship which contrives to elude capture and deliver contraband goods to the enemy³.

1 As to unneutral service see PARA 813 post.

2 As to blockade see PARAS 814-816 post.

3 As to contraband see PARAS 818, 823-824 post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/813. Unneutral service by neutral ships.

813. Unneutral service by neutral ships.

Unneutral service denotes a hostile act involving the participation of a neutral in a war. It includes the carriage of enemy dispatches¹ or the transmission of news in the interests of the enemy², the carriage of enemy military persons³ and the action of a neutral ship under enemy control⁴. Intention to aid the enemy need not exist⁵, but the service must be voluntary and not carried out under compulsion⁶. A mere intention to render service to the enemy without doing so is not unneutral service so as to render the ship condemnable in prize⁷.

1 *The Atalanta* (1808) 6 Ch Rob 440; *The Caroline* (1808) 6 Ch Rob 461. Exceptions exist in the case of dispatches being transmitted between the enemy state and its diplomatic and consular agents in a neutral state (*The Madison* (1810) Edw 224) and of the carriage of dispatches in the ordinary way of post (see PARA 821 text and note 7 post).

2 *The Edna* [1921] 1 AC 735, PC.

3 *The Friendship* (1807) 6 Ch Rob 420; *The Orozembo* (1807) 6 Ch Rob 430. It does not include the carriage of such a person in his private capacity: *The Friendship* supra; *The Svithiod* [1920] AC 718, PC. See also *The Hanametal* (1914) 1 Br & Col Pr Cas 347.

4 *The Maria* (1799) 1 Ch Rob 340 (neutral ship under enemy convoy); *The Rebecca* (1811) 2 Act 119; *The Thor (St Lucia)* (1914) 1 Br & Col Pr Cas 229; and see *The Bangor* [1916] P 181 (ship under charter to the enemy); *The Proton* (1916) 2 Br & Col Pr Cas 107 (affd on other grounds [1918] AC 578, PC).

5 *The Carolina* (1802) 4 Ch Rob 256; *The Orozembo* (1807) 6 Ch Rob 430; *The Zambesi* (1914) 1 Br & Col Pr Cas 358.

6 *The Pontoporos* [1916] P 100.

7 *The Twee Ambt* [1920] P 413; *The Alwina* [1916] P 131 (affd [1918] AC 444, PC).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/814. Blockade and neutral ships.

814. Blockade and neutral ships.

The object of a blockade is to prevent access to or egress from the enemy's coasts or ports completely¹. In order to be binding the blockade must be effective², and a neutral is affected with notice³ of the blockade, either actual⁴ or constructive⁵.

1 As to the blockade of rivers, straits and canals see 2 Oppenheim's International Law (7th Edn) 771-774.

2 Declaration of Paris respecting Maritime Law (Paris, 16th April 1856; 46 BFSP 26) art 4; *The Nancy* (1809) 1 Act 57. The blockade must be applied impartially to ships of all states, and must not be relaxed by remissness on the part of any of the blockading ships: *The Juffrow Maria Schroeder* (1800) 3 Ch Rob 148; *The Rolla* (1807) 6 Ch Rob 364 at 372. A blockade is not ineffective if a ship passes through unhindered, provided there was so much danger as to make its capture probable: *Northcote v Douglas*, *The Franciska* (1855) Spinks 287, PC. However, a temporary withdrawal of a blockading force does not invalidate either the effectiveness or continuance of the blockade (*The Frederick Molke* (1798) 1 Ch Rob 86; *The Columbia* (1799) 1 Ch Rob 154), but withdrawal of the blockading ships by compulsion of a belligerent does (*The Hoffnung* (1805) 6 Ch Rob 112), until the blockade has been shown to have been resumed (*The Trihetn* (1805) 5 Ch Rob 65). Blockading vessels may be assisted by land batteries: *The Nancy* (1809) 1 Act 68. As to the employment of submarines and aircraft see 2 Oppenheim's International Law (7th Edn) 780, 781.

3 A blockade de facto is good in law without notification, but if notice is given it must not be more extensive than the blockade itself: *Northcote v Douglas*, *The Franciska* (1855) Spinks 287, PC. Knowledge of the blockade on the part of the master is sufficient, however ignorant the owners of the ship may be: *The Columbia* (1799) 1 Ch Rob 154; *The Vrouw Judith* (1799) 1 Ch Rob 150. Similarly, since the master is also agent for the cargo-owners, it is not competent for them to rebut by evidence an irrebuttable presumption of law that they are privy to an intention of violating a blockade, if at the time the shipment was made they might have had knowledge of the blockade: *Baltazzi v Ryder*, *The Panaghia Rhomba* (1858) 12 Moo PCC 168; *The Mercurius* (1798) 1 Ch Rob 80.

4 Eg by actual notification to those on board by the master of a ship of the blockading squadron: *The Mercurius* (1798) 1 Ch Rob 80; *The Columbia* (1799) 1 Ch Rob 154 at 156; *Northcote v Douglas*, *The Franciska* (1855) Spinks 287, PC.

5 Eg where a blockade has been notoriously in existence for some length of time (*The Vrouw Judith* (1799) 1 Ch Rob 150) or where a reasonable time has elapsed after a diplomatic notification of a blockade to neutral powers (*The Jonge Petronella* (1799) 2 Ch Rob 131; *The Calypso* (1799) 2 Ch Rob 298; *The Adelaide* (1799) 2 Ch Rob 111n; *The Neptunus* (1799) 2 Ch Rob 110).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/815. Liability for breach of blockade by neutral ships.

815. Liability for breach of blockade by neutral ships.

A neutral ship is liable to capture or condemnation if it breaks or attempts to break a blockade. This liability arises from the moment of sailing if it sails on a voyage with an intention to break a blockade¹, and continues unless both intention and voyage have been clearly abandoned before capture². If a ship has broken blockade it remains liable to capture until it has reached its port of destination³, provided the blockade is still in existence⁴. A ship is not liable for breach of blockade if it enters or attempts to enter a blockaded port in consequence of an unavoidable

necessity⁵, or if it leaves the blockaded port in ballast⁶, or with a cargo purchased and delivered on board in good faith before the commencement of the blockade⁷.

Neutral cargo is liable to condemnation if the ship and cargo had the same owner. If the owners of the ship and cargo are different, both ship and cargo are liable to condemnation if the cargo is contraband or the cargo owner knew of the blockade when the cargo was shipped to the blockaded port⁸.

1 *The Columbia* (1799) 1 Ch Rob 154. If a ship anchors near a blockade port or approaches, without any unavoidable necessity such as stress of weather, within the protection of the shore, a presumption that it intends to break blockade arises: *The Neutralitet* (1805) 6 Ch Rob 30; *The Charlotte Christine* (1805) 6 Ch Rob 101; *The Gute Erwartung* (1805) 6 Ch Rob 182.

2 *The Imina* (1800) 3 Ch Rob 167; *The Alwina* [1916] P 131 at 141 (affd [1918] AC 444, PC).

3 *The Welvaart Van Pillaw* (1799) 2 Ch Rob 128; *The Juffrow Maria Schroeder* (1800) 3 Ch Rob 148; *The General Hamilton* (1805) 6 Ch Rob 61.

4 *The Lisette* (1807) 6 Ch Rob 387 at 395.

5 In an unavoidable necessity such as stress of weather: *The Hurtige Hane* (1799) 2 Ch Rob 124; *The Fortuna* (1803) 5 Ch Rob 27. See also *The Charlotta* (1810) Edw 252, where the question of necessity was left to the Trinity Masters (see PARA 875 post); *Baltazzi v Ryder*, *The Panaghia Rhomba* (1858) 12 Moo PCC 168. A ship is not liable for breach if it enters the port acting on mistaken information that the port is not blockaded: *The Neptunus* (1799) 2 Ch Rob 110. For reasons which were held not to amount to necessity see *The Adonis* (1804) 5 Ch Rob 256 (approach to determine whether land was England or France); *The Shepherdess* (1804) 5 Ch Rob 262 (subterfuge and intoxication of master); *The Neutralitet* (1805) 6 Ch Rob 30 (intended port iced up; also need to pick up pilot); *The Elizabeth* (1810) Edw 198 (ship in distress; crew fatigued, mate and compass lost). In general in these cases the reason given was not believed.

6 A ship is liable to capture if, outside a blockaded port, it loads cargo which has been brought out of the port in another craft (*The Maria* (1805) 6 Ch Rob 201; *The Lisette* (1807) 6 Ch Rob 387), but not if a cargo loaded before the blockade is transferred from the ship to lighters and retransferred to the ship (*The Otto and Olaf* (1855) Spinks 257).

7 *The Frederick Molke* (1798) 1 Ch Rob 86; *The Vrouw Judith* (1799) 1 Ch Rob 150.

8 *The Mercurius* (1798) 1 Ch Rob 80; *The Columbia* (1799) 1 Ch Rob 154; *The Alexander* (1801) 4 Ch Rob 93; *The Adonis* (1804) 5 Ch Rob 256; *The Exchange* (1808) Edw 39; *Baltazzi v Ryder*, *The Panaghia Rhomba* (1858) 12 Moo PCC 168.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/816. Area of blockade and neutral ships.

816. Area of blockade and neutral ships.

Conditions of modern warfare have rendered obsolete close coastal blockade and the authorities relating to it. Modern methods involving the use of patrolling aircraft, radio, radar and other devices enable the area of blockade to be greatly extended and the belligerent who, in pursuance of his now widely recognised right to prevent all sea trade with his enemy, properly announces and maintains a blockade over an area in which the ingress and egress of all goods is effectively prevented may be regarded as acting in conformity with the spirit of the old principles of blockade¹.

More doubtful is the legality of the practice of extending a blockade to neutral ports and of interfering with neutral ships and cargoes seeking entry or egress. The measures adopted by Great Britain and her allies during the 1914-18 and 1939-45 wars by means of a system of ship navicerts, cargo navicerts, and certificates of origin and interest² were primarily justified as legitimate reprisals³ in retaliation for acts committed by Germany in contravention of

international law. The weight of legal opinion appears to be against the acceptance of such measures as a valid development of the law of blockade, although there is no modern judicial decision on the subject either way⁴.

1 For a discussion of the legality of long distance blockade and references to the literature on the subject see 2 Oppenheim's International Law (7th Edn) 791-797.

2 The navicert system was regulated by the Order in Council regulating a System of Passes for Approved Cargoes and Ships dated 31 July 1940, SR & O 1940/1436 (revoked).

3 As to reprisals see PARA 817 post.

4 See 2 Oppenheim's International Law (7th Edn) 793-797.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/817. Reprisals and neutral ships.

817. Reprisals and neutral ships.

Reprisals afford a legitimate mode of challenging and restraining misconduct and, when confined within recognised limits and embodied in due form, a court of prize is bound to give effect to them¹. An Order in Council authorising reprisals² will be conclusive as to the facts which are recited as showing what are the best or only means of meeting the emergency. However, this will not preclude the right of any party aggrieved to contend, or the right of the court to hold, that these means are unlawful, as entailing on neutrals a degree of inconvenience which is unreasonable considering all the circumstances of the case³.

1 *The Blonde* [1922] 1 AC 313, PC.

2 For examples of Orders in Council proclaiming reprisals which were made during the 1914-18 war see the Order in Council dated 11 March 1915, framing reprisals for restricting further the commerce of Germany, SR & O 1915/206, and the Order in Council dated 16 February 1917, supplemental to the Orders in Council of March 11 1915 (a) and January 10 1917 (b) for preventing commodities of any kind from reaching, or leaving enemy countries, SR & O 1917/163. Similar restrictions were proclaimed during the 1939-45 war: see the Order in Council dated 27 November 1939, authorising seizure of German goods in merchant ships (1939), SR & O 1939/1709, directing retaliatory measures against the commerce of Germany. For its application to aircraft see further 2 Oppenheim's International Law (7th Edn) 791-797.

3 *The Zamora* [1916] 2 AC 77 at 98, PC; *The Leonora* [1919] AC 974, PC; *The Stigstad* [1919] AC 279, PC; *The Noordam (No 2)* [1919] P 255 at 263; *The United States* [1917] P 30.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/818. Carriage of contraband on neutral ships.

818. Carriage of contraband on neutral ships.

A neutral ship whose owner knowingly carries to the enemy a cargo which is wholly or in large part contraband¹ is liable to capture and condemnation². The ship remains so liable on the return journey after it has delivered the cargo if on its outward journey it had sailed with false papers³. If, however, the intention to convey contraband had been clearly abandoned before seizure, liability to condemnation ceases⁴.

1 As to the nature of contraband see PARAS 823-824 post.

2 *The Katwijk* [1916] P 177 at 180; *The Hakan* [1918] AC 148 at 156, PC; *The Hillerod* [1918] AC 412 at 416, 421, PC; *The Zamora (No 2)* [1921] 1 AC 801 at 805, PC; *The Rannveig* [1922] 1 AC 97, PC; *The Sidi Ifni* (1945) 1 Lloyd Pr Cas NS 200 at 204. In *The Kim*, *The Björnsterjne Björnson*, *The Alfred Nobel* [1920] P 319 it was held that the owner was affected by the knowledge of the charterers and masters as to the nature of the cargo. In some cases the inference as to the knowledge arising from the extent to which the cargo is contraband cannot be rebutted, whereas in others it can: *The Hakan* supra at 155. Where the proportion of contraband was small, it was held that the owner was not affected by the knowledge of the charterer: *The Ran* [1919] P 317 at 327.

3 *The Nancy* (1800) 3 Ch Rob 122; *The Margaret* (1810) 1 Act 333.

4 *The Alwina* [1918] AC 444, PC.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/819. Claim for wrongful capture of ship.

819. Claim for wrongful capture of ship.

Where a ship has been captured and it is proved that there was no reasonable ground for the action taken¹, and that the ship and its cargo were not in fact liable to condemnation, the Crown will be liable to pay full compensation².

1 For what may constitute reasonable ground of capture see PARA 827 post.

2 *The Bernisse*, *The Elve* [1920] P 1 (on appeal [1921] 1 AC 458, PC); *The Mim* [1947] P 115, [1947] 2 All ER 476. The absence or refusal of a navicert or licence to export the goods may constitute a factor in determining the existence of reasonable grounds of suspicion for the seizure of the goods: *Conservas Cerqueira Lda v HM Procurator General*, *The Monte Contes* [1944] AC 6 at 11, PC; *The Sidi Ifni* (1945) 1 Lloyd Pr Cas NS 200. Where an enemy ship captured within neutral territorial waters was sunk by the captors, a claim by the neutral state for the loss of the ship was not allowed: *The Valeria* [1920] P 81 (affd [1921] 1 AC 477, PC); cf *The Pellworm* [1922] AC 292, PC: see PARA 820 note 5 post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(ii) Capture of Ships/820. Requisitioning of ships.

820. Requisitioning of ships.

By international law a belligerent power has the right to requisition¹ ships or goods in the custody of the Prize Court² pending a decision of the question whether they should be condemned or released, although the right is subject to certain limitations³. The effect of an order for requisition is not to divest the property in the captured ships from their owners⁴, and, until sentence of confiscation is passed, the owner of the property is entitled to come forward and assert his rights⁵.

1 The right to requisition in prize is to be distinguished from the Crown's prerogative right in time of emergency to requisition ships: *The Broadmayne* [1916] P 64, CA; *The Zamora* [1916] 2 AC 77 at 99, PC. As to requisitioning British ships see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 813.

2 As to the Prize Court see PARA 847 et seq post.

3 The ship or goods in question must be urgently required for use in connection with the defence of the realm or the prosecution of the war. There must be a real question to be tried, so that it would be improper to order an immediate release, and the right must be enforced by application to the Prize Court: see *The Zamora* [1916] 2 AC 77 at 106, PC; *The Consul Olsson* [1920] P 43; *The Antares* (1915) 1 Br & Col Pr Cas 261. The fact

that the Crown does not intend to seek condemnation does not affect the matter (see *The Prins Knud* [1941] P 39, [1941] 1 All ER 443), but the judgment on appeal sub nom *France Fenwick Tyne and Wear Co v Procurator General, The Prins Knud* [1942] AC 667, [1942] 2 All ER 453, PC, expressed no opinion on the course adopted.

4 *The Pellworm* [1922] 1 AC 292, PC.

5 Where enemy ships or goods are captured in neutral waters, their release, and in some cases the value where they no longer exist in specie, may be obtained from the Prize Court: see *The Pellworm* [1922] 1 AC 292, PC; and cf *The Valeria* [1920] P 81 (affd [1921] AC 477, PC); and see PARA 807 text and notes 9-10 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/821. Goods which are not lawful prize.

(iii) Capture of Goods

821. Goods which are not lawful prize.

The Declaration of Paris of 1856¹, which is recognised as part of the law of nations², protects from capture enemy goods carried in a neutral ship and neutral goods carried in an enemy ship³. It has, however, no application to cases where the goods are absolute or conditional contraband⁴, or to goods 'infected' by contraband⁵, or to enemy goods which have been discharged in a British port from a neutral ship⁶. Postal correspondence of neutrals or belligerents, official or private, which may be found on board a neutral or enemy ship at sea is inviolable⁷.

1 The Declaration of Paris respecting Maritime Law (Paris, 16 April 1856; 46 BFSP 26) arts 2, 3.

2 *The Marie Glaeser* [1914] P 218 at 232-233.

3 *The Dirigo* [1919] P 204; *The Gloria* (1940) 1 Lloyd Pr Cas NS 11; *The Steaua Romana* [1944] P 43, where wireless apparatus leased from a neutral state and installed in an enemy ship was not condemned with the ship. The Declaration of Paris respecting Maritime Law does not protect enemy goods on British ships: *The Roumanian* [1916] 1 AC 124, PC.

4 As to contraband see PARAS 823-824 post.

5 As to the doctrine of infection see PARA 826 post.

6 *The Bawean* [1918] P 58 at 66.

7 International Convention relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime War (Hague Convention XI) (The Hague, 18 October 1907; TS 14 (1910); Cd 5118) arts 1, 2. The inviolability does not apply if the ship is proceeding unlawfully to or from a blockaded port: arts 1, 2. Securities contained in letters are not postal correspondence for these purposes (*The Noordam (No 2)* [1920] AC 904, PC); nor are parcels forwarded by parcel post (*The Simla* (1915) 1 Br & Col Pr Cas 281). For an account of the operation of these provisions during the 1914-18 and 1939-45 wars see 2 Oppenheim's International Law (7th Edn) 480-481.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/822. Enemy goods which are lawful prize.

822. Enemy goods which are lawful prize.

Enemy goods afloat in British¹, allied² or enemy ships³, enemy goods of a contraband nature⁴ laden in neutral ships⁵, and enemy goods in a British port having been landed from a British, allied, enemy or neutral ship⁶ are liable to seizure and condemnation.

'Goods' includes cargo⁷, goods sent by parcel post⁸, money⁹, bonds and securities¹⁰ and other choses in action¹¹, freight¹² and proceeds of condemnable goods¹³. By direction of the Prize Court¹⁴ the personal effects of the master and crew may be released to them¹⁵.

1 *The Aldworth* (1914) 1 Lloyd Pr Cas 137; *The Miramichi* [1915] P 71 at 82.

2 *The Panariellos* (1915) 84 LJP 140; affd (1916) 85 LJP 112, PC.

3 *The Roland* (1915) 84 LJP 127.

4 As to contraband see PARAS 823-824 post.

5 See PARA 821 ante.

6 *The Sorfareren* (1915) 85 LJP 121 (affd (1917) 117 LT 259, PC); *The Roumanian* [1916] 1 AC 124, PC; *The Eden Hall* [1916] P 78; *The Glenroy* [1918] P 82; *The Bawean* [1918] P 58 at 66; *The Achilles* [1919] P 340.

7 Goods are cargo from the moment they are shipped under a bill of lading until they cease to be bound by it: *Ten Bales of Silk at Port Said* (1916) 2 Br & Col Pr Cas 247 at 254.

8 *The Tubantia* (1916) 5 Lloyd Pr Cas 282.

9 *Turkish Moneys taken at Mudros* (1916) 2 Br & Col Pr Cas 33.

10 *The Noordam (No 2)* [1920] AC 904, PC.

11 *The Frederik VIII* [1917] P 43.

12 *The Sado Maru* [1947] P 17, [1947] 1 All ER 430.

13 *The Clan Mactavish* (1916) 7 Lloyd Pr Cas 160; *The Soldier Prince* (1917) 7 Lloyd Pr Cas 163; *The Achilles* [1919] P 340.

14 As to the Prize Court see PARA 847 et seq post.

15 *The Schlesien* (1914) 2 Lloyd Pr Cas 92; *The Pomona* (1940) 1 Lloyd Pr Cas NS 1 at 3; *The Steaua Romana* [1944] P 43.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/823. Neutral goods: absolute and conditional contraband.

823. Neutral goods: absolute and conditional contraband.

There is no existing international agreement concerning the various types of goods to be treated as absolute or as conditional contraband, and although in 1939 the distinction was preserved¹, the ensuing conditions of total war and the extensive use of the navicert system rendered the distinction obsolete in practice². In so far, however, as the distinction may still obtain, neutral goods declared by a belligerent to be absolute contraband are, if destined for an enemy country, liable to seizure and condemnation on similar principles to those governing seizure and condemnation of enemy goods which are lawful prize³, and it is within the power and functions of the Crown to add to the list of contraband from time to time⁴. Goods which are declared by a belligerent to be conditional contraband are liable to seizure and condemnation if they are probably intended to be applied for warlike purposes and destined for an enemy government or to an enemy base of naval or military equipment or supply⁵.

Neutral goods carried at sea at a time when their owners were unaware of a declaration of contraband are liable to condemnation, but compensation may be made to the neutral owners

provided they acted not only in ignorance but innocently and honestly, both in relation to the shipment and to the presentation of their claim and case before the court⁶.

1 See the Proclamation dated 3 September 1939 (printed in SR & O 1939 vol II, 3605), concerning contraband.

2 See Colombos's Law of Prize (3rd Edn) 210-215; 2 Oppenheim's International Law (7th Edn) 802. As to the navicert system see PARA 816 note 2 ante.

3 *The Axel Johnson, The Drottning Sophia* [1917] P 234 at 238 (affd [1921] 1 AC 473, PC); *The Noordam* [1919] P 57; and see PARA 822 ante. Seizure is justifiable where there is reasonable suspicion of an enemy destination: *The Falk etc* [1921] 1 AC 787, PC. See also *The Kim, The Alfred Nobel, The Björnsterjne Björnson, The Fridland* [1915] P 215 at 284; *The Charles Racine, The Petter* (1947) 1 Lloyd Pr Cas NS 215, PC.

4 *The Katwijk* [1916] P 177 at 179.

5 *The Hakan* [1918] AC 148 at 150, PC; *The Louisiana* [1918] AC 461, PC; *The Kim, The Alfred Nobel, The Björnsterjne Björnson, The Fridland* [1915] P 215 at 281-284; *The Sidi Ifni* (1945) 1 Lloyd Pr Cas NS 200. A distinction may still exist between absolute and conditional contraband as regards the degree of innocence required to be proved by the owner when claiming compensation for condemnation of goods carried in ignorance of their contraband character. Where conditional contraband is concerned, it is sufficient merely to show actual diversion from the original enemy destination (*The Glenroy (No 2)* [1944] P 11; on appeal no opinion was expressed on this point: [1945] AC 124 at 142, PC), whereas in the case of absolute contraband proof of abandonment of the original intention to ship to an enemy destination may also be necessary (*The Charles Racine, The Petter* (1947) 1 Lloyd Pr Cas NS 215 at 220).

6 *The Sorfareren* (1915) 85 LJP 121 at 128 (affd (1917) 117 LT 259, PC); *The Jurko Topic* (1942) 1 Lloyd Pr Cas NS 89. To claim compensation the owner must satisfy the court that, on obtaining knowledge that the cargo was contraband, he had taken all due steps to divert the cargo from its enemy destination: see *The Charles Racine, The Petter* (1944) 1 Lloyd Pr Cas NS 177; on appeal (1947) 1 Lloyd Pr Cas NS 215, PC.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/824. Neutral goods: contraband and continuous voyage.

824. Neutral goods: contraband and continuous voyage.

Under the doctrine of continuous voyage, absolute or conditional contraband destined by transshipment or land transport for an enemy destination¹ is liable to condemnation².

Contraband material imported into a neutral country to be manufactured into goods destined for the enemy does not become part of the common stock of the country so as to defeat the doctrine of continuous voyage³. Similarly, when contraband goods consigned to a neutral port have been seized as prize on the ground that they have an ultimate enemy destination, the existence of an extensive trade by the re-export of similar goods, or products of them, from the neutral country to the enemy country will render the goods so consigned liable to condemnation⁴.

1 As to absolute and conditional contraband see PARA 823 ante.

2 *The Noordam* [1919] P 57; *The Kim, The Alfred Nobel, The Björnsterjne Björnson, The Fridland* [1915] P 215 at 275; *The Louisiana* [1918] AC 461, PC; *The Oranje Nassau* [1919] P 346; *The Glenroy (No 2)* [1944] P 11 (affd [1945] AC 124, PC); *The Charles Racine, The Petter* (1944) 1 Lloyd Pr Cas NS 177 (affd (1947) 1 Lloyd Pr Cas NS 215, PC). As to the degree of evidence required to satisfy the court of the diversion of the contraband from its hostile destination see PARA 823 note 5 ante.

3 *The Balto* [1917] P 79; *The Bonna* [1918] P 123 at 128. In the Proclamation dated 3 September 1939 (printed in SR & O 1939 vol II 3605), all the materials or ingredients used in the manufacture of contraband and

all articles necessary or convenient for the production or use of such materials or ingredients were treated as contraband.

4 *The Baron Stjernblad* [1918] AC 173, PC.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/825. Neutral goods: produce of enemy soil.

825. Neutral goods: produce of enemy soil.

The produce of land in an enemy country, while in the possession or ownership of the person owning or holding that land, is liable to seizure and condemnation by a belligerent with whom the state where the land is situate is at war, even though the person owning or holding the land is a neutral and resident in a neutral country¹.

1 *The Asturian* [1916] P 150. It seems that such produce, if condemnable as prize before sale, could be followed for the purposes of seizure and condemnation after sale: see *The Achilles* [1919] P 340 at 344; *The Coburg* (1950) 1 Lloyd Pr Cas NS 286. Cf *The Roumanian* [1916] 1 AC 124 at 138, PC.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/826. Neutral goods: doctrine of infection.

826. Neutral goods: doctrine of infection.

Under the doctrine of infection, goods, not in themselves liable to condemnation, which belong to the same owner as other cargo in the same ship, which other cargo is liable to condemnation, are liable to seizure and condemnation as lawful prize¹.

1 *The Parana* [1919] P 249; *The Frogner* [1919] P 127 at 130; *The Kronprinsessan Margareta, The Parana* [1921] 1 AC 486 at 494-495, PC. For references to decisions applying the doctrine to the 1939-45 war see Colombos's Laws of Prize (3rd Edn) 221-222.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/827. Claims arising out of seizure of goods.

827. Claims arising out of seizure of goods.

Where there was no probable cause justifying seizure of goods, the owner will be entitled to the release of the goods together with costs and damages¹. Circumstances of suspicion², such as false papers³, the hostile associations of the consignors or consignees⁴, or the absence of a navicert⁵, will constitute probable cause for seizure, and the onus of proof that the suspicion is unjustified will rest with the claimant⁶.

British shipowners in time of war are not permitted to claim for any delay or inconvenience incurred by reason of the diversion or detention of their ship for the purpose of the seizure and discharge of enemy property on board it which is liable to confiscation⁷.

Claims for general average and freight stand upon the same footing and have the first right against funds in court. Where a claim for general average by the ship against the cargo exists

before the cargo is captured, the captors take *cum onere* of the cargo's contribution to the general average loss⁸.

If at common law no freight is due in respect of the carriage of contraband goods, the Prize Court has jurisdiction to award compensation in lieu of freight, but the discretion to do so is exercised only in wholly exceptional cases⁹. Compensation in lieu of freight may be awarded against captors where, by reason of a seizure *jure belli* which turns out to be unlawful, the ship has been deprived of earning freight which but for the seizure could have been lawfully earned¹⁰. Neutral shipowners carrying cargo declared contraband after the commencement of the voyage¹¹, and British shipowners carrying enemy cargo shipped before the declaration of war¹², may also be entitled to compensation in lieu of freight, but no allowance will be made in respect of delay or inconvenience caused by the seizure¹³.

1 *The Baron Stjernblad* [1918] AC 173 at 175, PC. In proceedings to which the Crown is a party, both damages and costs may be awarded against the Crown or the officer who represents the Crown: *The Zamora* [1916] 2 AC 77, PC; *The Oscar II* [1920] AC 748, PC. As to costs in Crown proceedings see the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7 (as amended); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 136.

2 *The Baron Stjernblad* [1918] AC 173, PC; *The Gabbiano* [1940] P 166.

3 *The Lynger Fjord* (1916) 6 Lloyd Pr Cas 115; *The Sydland* [1917] P 161 n.

4 *The Unitas* [1948] P 205, [1948] 1 All ER 421; affd sub nom *Lever Bros and Unilever NV v HM Procurator General*, *The Unitas* [1950] AC 536, [1950] 2 All ER 219, PC.

5 *Conservas Cerqueira Lda v HM Procurator General*, *The Monte Contes* [1944] AC 6, PC; *The Sidi Ifni* (1945) 1 Lloyd Pr Cas NS 200.

6 *Conservas Cerqueira Lda v HM Procurator General*, *The Monte Contes* [1944] AC 6, PC.

7 *The Tredegar Hall* [1916] P 217; *The Domald* [1920] P 56; *The Einar Jarl* [1920] P 64 n; *The Rio de Janeiro* [1919] P 242 n; but see *The Remonstrant* (1917) 6 Lloyd Pr Cas 329.

8 *The Sorfareren* (1915) 85 LJP 121 at 130; affd (1917) 117 LT 259, PC. As to general average see INSURANCE vol 25 (2003 Reissue) PARAS 420-430; CARRIAGE AND CARRIERS vol 7 (2008) PARAS 605-625. The Prize Court has equitable jurisdiction to award civil salvage for services rendered to a ship before seizure: *France Fenwick Tyne and Wear Co v Procurator General*, *The Prins Knud* [1942] AC 667, [1942] 2 All ER 453, PC. As to the Prize Court see PARA 847 et seq post.

9 *The Roland* (1915) 1 Br & Col Pr Cas 188; *The Iolo* [1916] P 206; *The Jeanne* [1917] P 8; *The Prins der Nederlanden* [1921] 1 AC 754, PC; *The Glenearn (No 2)* [1942] P 50.

10 *The St Helena* [1916] 2 AC 625, PC.

11 *The Katwijk* [1916] P 177; *The Heim* [1919] P 237; *The Jurko Topic* (1942) 1 Lloyd Pr Cas NS 89. Where, after seizure of the cargo, the neutral country declares war and the neutral shipowner becomes an enemy, freight owing to him may be condemned in prize even though the original seizure was not of hostile character: *The Sado Maru* [1947] P 17, [1947] 1 All ER 430.

12 *The Juno* [1916] P 169.

13 *The Juno* [1916] P 169; *The Remonstrant* (1917) 6 Lloyd Pr Cas 329. Compensation is to be assessed by reference to the loss of freight on each individual parcel and not to the loss of profit on the freight as a whole, and payment of a proportionate part of the freight based on the mileage covered may be a proper method of assessment: *The Glenearn (No 2)* [1942] P 50. In the absence of any oppressive or improper conduct on the part of the Crown, the successful claimant may not recover the costs of proving his claim: *The Panaghiotis* [1943] P 4, [1942] 2 All ER 525.

828. Ownership of goods.

The sole criterion of the ownership of goods is the legal ownership¹. The date of the seizure is in general the date at which the position or status of the goods must be determined².

1 *The Odessa* [1916] 1 AC 145 at 155, PC; *The Parchim* [1918] AC 157 at 160, PC; *The Urna* [1920] AC 899 at 903, PC; *The Kronprinsessan Margareta, The Parana* [1921] 1 AC 486 at 494, PC; *The Gabbiano* [1940] P 166.

2 *The Southfield* [1917] AC 390n, PC; *The Rijn* [1917] P 145; *The Frogner* [1919] P 127 at 129; *The Orteric* [1920] AC 724 at 729, PC. The same rule determines the ownership of vessels: *Sorensen v R, The Baltica* (1857) 11 Moo PCC 141 at 145. Ownership of the thing seized is not affected by capture, but on condemnation by the Prize Court the ownership is transferred as from the date of seizure to the monarch or to her grantees: *The Odessa* [1916] 1 AC 145 at 153, PC. As to the Prize Court see PARA 847 et seq post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/829. Transfer of ownership before seizure.

829. Transfer of ownership before seizure.

The transfer of ownership in goods afloat¹ from an enemy to a neutral subject in a state of war, existing or imminent, will not be recognised by the Prize Court unless the actual delivery of the goods has preceded seizure². Transfer of the ownership in goods induced by apprehension of hostilities is not void, but may not be set up against those in fraud of whose rights the transfer is deemed to have been made³.

1 It is undecided whether the rule covers goods which, although still in transit, have been warehoused in a port: see *The Glenearn* [1941] P 51 at 64, [1941] 1 All ER 371 at 378.

2 *The Kronprinsessan Margareta, The Parana* [1921] 1 AC 486, PC; *The Vesta* [1921] 1 AC 744, PC; *The Bawean* [1918] P 58 at 64; *The United States* [1917] P 30; *The Southfield* [1917] AC 390n, PC; *The Annie Johnson, The Kronprinsessan Margareta* [1918] P 154; *The Posteiro* (1917) 7 Lloyd Pr Cas 21. Cf Lord Merriman's restatement of the rule in *The Glenearn* [1941] P 51 at 63, [1941] 1 All ER 371 at 378, which affirms that, so far as a British buyer is concerned, he cannot be guilty of trading with the enemy until after the outbreak of hostilities. As to the Prize Court see PARA 847 et seq post.

3 *The Daksa* [1917] AC 386 at 389, PC.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/830. Transfer of ownership after seizure.

830. Transfer of ownership after seizure.

Goods which at the date of their seizure in prize are not enemy property cannot be condemned as enemy goods, even where the property in them has passed to an enemy before the issue of the writ claiming condemnation, but the goods will not be released to a claimant who was the neutral owner at the date of seizure if, before the claim is made, the goods have become enemy property¹. Where property which possessed enemy character at the date of seizure becomes neutral at the date of claim, the goods may be condemned².

1 *The Prinz Adalbert* [1917] AC 586, PC; *The Zaanland* [1918] P 303 at 309; *The Frogner* [1919] P 127 at 129; *The Orteric* [1920] AC 724, PC; *The Oscar II (No 2)* [1921] 1 AC 467 at 470-471, PC.

2 *The Gothland* [1916] P 239 n.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iii) Capture of Goods/831. Right of pre-emption.

831. Right of pre-emption.

Pre-emption is the right of the Crown to purchase compulsorily from neutral owners naval stores found in a neutral ship bound for an enemy port. Such a sale puts an end to all litigation as to the goods between the Crown on the one hand and the neutral owners on the other¹.

1 *The Zamora* [1916] 2 AC 77 at 105, PC; *The Dirigo, The Hallingdal etc* [1919] P 204; *The Edna* [1921] 1 AC 735, PC; and see the Naval Prize Act 1864 s 38 (amended by the Statute Law Revision Act 1893; the Customs and Excise Management Act 1979 s 177(1), Sch 4 para 1; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt 1. This provision does not apply to aircraft or goods in them: Prize Act 1939 s 1(3), Schedule Pt II.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iv) Enemy Character of Ships and Goods/832. Domicile; commercial domicile.

(iv) Enemy Character of Ships and Goods

832. Domicile; commercial domicile.

For the purposes of prize, domicile¹ is the test of enemy or non-enemy character. A neutral citizen who resides in an enemy country for a period, however short or temporary, for the purpose of trade or otherwise so as to make his trade or estate form part of its resources² acquires a commercial domicile there and property belonging to him will prima facie be treated as enemy property³. A commercial domicile may be abandoned, and, if prior to the actual capture of property, its owner has already done some unequivocal act indicating an abandonment of such domicile the property will prima facie be treated as neutral⁴. The burden of proving that a commercial domicile acquired in an enemy country before the outbreak of war and retained up to that time has been altered is upon the neutral citizen⁵.

A national of a belligerent state can acquire a commercial domicile in a neutral state which will protect his goods captured at sea from condemnation, but residence in a neutral state is an essential condition to such protection⁶. If, on the outbreak of war, he leaves the neutral country for another neutral country he will lose his acquired commercial domicile in the first neutral country if there is no evidence that his departure is merely temporary⁷.

1 As to domicile generally see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 35 et seq.

2 *The Eumaeus* (1915) 85 LJP 130; *Tingley v Müller* [1917] 2 Ch 144 at 173, CA. A commercial domicile cannot be acquired in a country where business is transacted without residence there (see *The Hypatia* [1917] P 36), but a fixed establishment is not necessary (*The Jonge Klassina* (1804) 5 Ch Rob 297 at 303).

3 *The Anglo-Mexican* [1918] AC 422 at 424-425, PC.

4 *The Anglo-Mexican* [1918] AC 422 at 425, PC.

5 *The Kara Deniz* (1922) 3 Br & Col Pr Cas 1070, PC. The English authorities are not conclusive on the question whether a neutral resident in a country which, by the outbreak of hostilities, becomes an enemy country ought to be allowed a reasonable time thereafter to elect whether he will abandon or retain his acquired domicile: see *The Anglo-Mexican* [1918] AC 422 at 425, PC.

6 *The Clan Grant* (1915) 1 Br & Col Pr Cas 272 at 274; *The Hypatia* [1917] P 36 at 39. Prize courts accept only with reluctance any evidence that an enemy national has acquired a neutral or non-hostile commercial domicile: *The Rostock* (1915) 1 Br & Col Pr Cas 523. A non-hostile commercial domicile includes such a domicile in British Territory: *The Annaberg* (1916) 2 Br & Col Pr Cas 241.

7 *The Flamenco* (1915) 1 Br & Col Pr Cas 509 at 513; *The Orduna* (1915) 32 TLR 53 at 55.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(2) VALIDITY OF CAPTURE/(iv) Enemy Character of Ships and Goods/833. Enemy house of trade.

833. Enemy house of trade.

A neutral, wherever resident, who owns or is a partner in a house of business trading in or from an enemy country or enemy occupied territory¹, may be properly deemed an enemy in respect of his property or interest in such business², and his goods will be subject to capture at sea after hostilities even though shipped before the war or before knowledge of war³. However, a neutral having such an interest in a country which becomes an enemy country on the outbreak of hostilities ought to be allowed a reasonable interval during which he may discontinue or dissociate himself from the business in question⁴.

The fact of an enemy citizen having a house of trade in a neutral country does not exempt his property there from condemnation⁵.

1 *V/O Sovfracht v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203, [1943] 1 All ER 76, HL.

2 *The Anglo-Mexican* [1918] AC 422 at 425, PC; *The Lützow* [1918] AC 435 at 437, PC. The rule applies even where the business is carried on by a company separately incorporated in enemy or enemy occupied territory, if in fact it is controlled by the neutral: *Part Cargo ex MV Glenroy, Procurator-General v Spencer, Controller of Mitsui & Co Ltd* [1945] AC 124, PC.

3 *The Manningtry* [1916] P 329 at 339.

4 *The Anglo-Mexican* [1918] AC 422, PC; *The Eumaeus* (1915) 85 LJP 130. The burden of proving that reasonable steps were taken to discontinue the hostile association rests with the claimant: *The Manningtry* [1916] P 329; *Part Cargo ex MV Glenroy, Procurator-General v Spencer, Controller of Mitsui & Co Ltd* [1945] AC 124, PC; *The Unitas* [1948] P 205, [1948] 1 All ER 421 (affd sub nom *Lever Bros and Unilever NV v HM Procurator General, The Unitas* [1950] AC 536, [1950] 2 All ER 219, PC).

5 *The Manningtry* [1916] P 329.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(3) RIGHTS AND DUTIES OF CAPTORS/834. Right to visit and search ship.

(3) RIGHTS AND DUTIES OF CAPTORS

834. Right to visit and search ship.

The commander of a belligerent ship of war has a right to visit a private ship at sea¹ or in the belligerent's own ports² and examine its papers³. If the visiting officer is not then satisfied that the ship is not liable to detention, he has a right to search it, even though it is a neutral ship under neutral convoy⁴, and if there is sufficient cause it may be detained. Opposition to this right of visit and search by resistance on the part of the master of the ship subjects the ship and its cargo to condemnation⁵.

1 In the absence of reasonable suspicion after visiting the ship at sea the belligerent must allow the ship to proceed: *The Mim* [1947] P 115, [1947] 2 All ER 476.

2 A belligerent may lawfully direct a ship into port for the purpose of visit and search where search at sea is impossible under modern conditions of warfare: *The Zamora* [1916] 2 AC 77, PC; *The Patrai* (1952) 1 Lloyd Pr Cas NS 339.

3 In the Naval Prize Act 1864, 'ship papers' is defined as including all books, passes, sea briefs, charter parties, bills of lading, cockets, letters and other documents and writings delivered up or found on board a captured ship: s 2. 'Aircraft papers' means all books, passes, charter parties, bills of lading, manifests, certificates, licences, lists, tickets, notes, letters and other documents and writings delivered up and found on board a captured aircraft: s 2 (definition added by the Prize Act 1939 s 1(2), Schedule Pt I).

4 *The Maria* (1799) 1 Ch Rob 340.

5 *The Maria* (1799) 1 Ch Rob 340; *The Catharina Elizabeth* (1804) 5 Ch Rob 232. In *The Indo-Chinois* (1941) 1 Lloyd Pr Cas NS 73 the resistance took the form of deliberate spoliation of the ship papers and attempted scuttling of the ship.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(3) RIGHTS AND DUTIES OF CAPTORS/835. Duty to dispatch prize to convenient port for adjudication.

835. Duty to dispatch prize to convenient port for adjudication.

The right of seizure of ships is subject to the duty of the officer in command of the belligerent ship of war which has made the capture to send in the prize for adjudication¹ to a convenient port in the British dominions as soon as possible, otherwise he may be liable to pay damages and costs². 'Convenient' is a general and also a relative term. It has been held that to fall within this term the port ought to: (1) be one wherein the prize can enter with the cargo on board and lie in safety; (2) be one which is in easy communication with a prize court³; and (3) be as near as possible to the place of capture⁴. If the captor takes the prize to a port which is not convenient and the ship is ultimately released, the captor may be condemned to pay demurrage in respect of the loss of time caused by his improper conduct⁵.

If a ship is rescued by its crew out of the hands of the prize crew, and is retaken, the rescue renders both ship and cargo liable to condemnation⁶.

1 Several small ships may be included in one adjudication: see the Naval Prize Act 1864 s 30.

2 *The Peacock* (1802) 4 Ch Rob 185; *The Elsebe* (1804) 5 Ch Rob 173; *Cremidi v Powell, The Gerasimo* (1857) 11 Moo PCC 88; *France Fenwick Tyne and Wear Co v Procurator General, The Prins Knud* [1942] AC 667 at 675, [1942] 2 All ER 453 at 456, PC. It has been held that the condemnation of a ship taken into an allied port is valid (*The Christopher* (1799) 2 Ch Rob 209), and that condemnation of a ship taken into a neutral port may be valid under peculiar circumstances (*The Polka* (1854) Spinks 57; *The Zamora* [1916] 2 AC 77, PC; *The Odessa* [1916] 1 AC 145 at 153, PC; *The Südmark (No 2)* [1918] AC 475, PC; *The Oscar II* [1920] AC 748 at 751, PC). Commanding officers of Her Majesty's ships, vessels or aircraft or others subject to the Naval Discipline Act 1957 may incur criminal liability under the Act for improper dealings with the papers, personnel or goods of a ship seized as prize or for improper dealings with the ship itself: see ss 23, 24 (both as amended); and ARMED FORCES.

3 *The Washington* (1806) 6 Ch Rob 275. As to the Prize Court see PARA 847 et seq post.

4 *The Anna* (1805) 5 Ch Rob 373; *The Südmark (No 2)* [1918] AC 475, PC.

5 *The Wilhelmsberg* (1804) 5 Ch Rob 143; *The Catharina Elizabeth* (1810) 1 Act 309; *The Jurko Topic* (1942) 1 Lloyd Pr Cas NS 89. Similarly, damages may be recovered for unreasonable delay in deciding whether or not to seize or release the ship after its initial detention for search: *The Patrai* (1952) 1 Lloyd Pr Cas NS 339.

6 *The Dispatch* (1801) 3 Ch Rob 278.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(3) RIGHTS AND DUTIES OF CAPTORS/836. Duty to take care of prize.

836. Duty to take care of prize.

The captor is answerable in costs and damages if due care is not taken in bringing in a prize for adjudication, and if damage to or loss of the prize ensues through the negligence of the captor's agent, such as the prizemaster¹. However, the captor is not an insurer and is not answerable in the absence of negligence².

The primary duty of the captor of an enemy ship, as already stated³, is to bring the ship into port for adjudication, so that it may be judicially ascertained if it is enemy property, or natural property liable to capture, and so prevent mistakes by the captor⁴. Destruction of prizes is only allowed when the prize is in such condition as prevents it being sent to any port for adjudication⁵, or when the capturing vessel is unable to spare a prize crew⁶. If the captured ship is neutral or has a licence from the captor's country, it may not be destroyed by the captor⁷; therefore, if a neutral ship or a ship protected by a licence is destroyed, however meritorious such act may be as far as the belligerent state is concerned, the neutral or protected shipowner is entitled to full compensation for the loss of his property⁸.

1 *Der Mohr* (1800) 3 Ch Rob 129; *Der Mohr* (1802) 4 Ch Rob 314; *The Nemesis* (1808) Edw 50. The prizemaster is the person in command of the prize: see *The Oscar II* [1920] AC 748, PC. Cf *The Mim* [1947] P 115, [1947] 2 All ER 476, where the navigation of the ship, as a result of which the ship was lost, was held to remain under the control of the neutral ship's officers. By the Prize Court Rules 1939, SR & O 1939/1466, the Procurator General as representing the Crown is a party to prize court proceedings instead of the actual captors, and as such incurs the liability as to damage and costs to which the actual captors were formerly subject: *The Zamora* [1916] 2 AC 77 at 111, PC; *The Oscar II* [1919] P 171 at 180; affd [1920] AC 748, PC. For the meaning of 'party' see PARA 853 note 6 post. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post.

2 *The John* (1818) 2 Dods 336; *The Maria, The Vrow Johanna* (1803) 4 Ch Rob 348; *The Südmark (No 2)* [1918] AC 475, PC; *The Valeria* [1920] P 81 (affd [1921] 1 AC 477, PC); *The United States* [1920] P 430; *The New Sweden* [1922] 1 AC 229 at 232, PC.

3 See PARA 835 ante.

4 *The Felicity* (1819) 2 Dods 381; *Cremedi v Powell, The Gerasimo* (1857) 11 Moo PCC 88.

5 *The Valeria* [1921] 1 AC 477, PC.

6 *The Stoer* (1916) 5 Lloyd Pr Cas 18. In case a prize is destroyed, the captor must remove the crew, ship papers and cargo if possible and send the papers and cargo to a port for adjudication: *The Stoer* supra.

7 *The Acteon* (1815) 2 Dods 48; *The Felicity* (1819) 2 Dods 381.

8 *The Felicity* (1819) 2 Dods 381. It is not clear how, if at all, the law relating to the rights and duties of captors would apply to aircraft seized in prize.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(3) RIGHTS AND DUTIES OF CAPTORS/837. Duty of person in charge of incoming ship.

837. Duty of person in charge of incoming ship.

On the arrival of a captured ship or goods¹ in a United Kingdom port, the person in charge of the ship or goods must bring to at the proper place of discharge and must render such accounts and particulars as to the ship and cargo as are required by the customs officer, and must allow the customs officer to come on board and make searches or warehouse the goods, as in the case of an ordinary ship, subject, as regards ships of war belonging to Her Majesty, to any special regulations issued from the Treasury². A similar duty, in respect of aircraft and goods, is imposed on the pilot or other person in charge of the aircraft, subject, similarly, in the case of military aircraft, to any special Treasury regulations³.

Such ships, aircraft and goods are liable to the same customs duties or forfeiture, and subject to the same restrictions under the customs laws, as if they had come in voluntarily⁴, except that, when goods taken as prize are sold for home consumption, and the proceeds, after payment of customs duties, are insufficient to satisfy the claims on them, the Treasury has power to remit the customs duties in whole or part⁵.

1 For the meaning of 'ship' and 'goods' see PARA 803 note 4 ante.

2 See the Naval Prize Act 1864 s 48 (amended by the Statute Law Revision Act 1893; and the Customs and Excise Management Act 1979 s 177(1), Sch 4 paras 1, 12 Table Pt 1). The penalty for non-compliance is payment of a sum not exceeding £100, enforceable under the customs laws: Naval Prize Act 1864 s 48. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 See the Naval Prize Act 1864 s 48A (added by the Prize Act 1939 s 1(2), Schedule, Pt I; and amended by the Customs and Excise Management Act 1979 Sch 4 paras 1, 12 Table Pt 1).

4 See the Naval Prize Act 1864 s 47 (amended by the Prize Act 1939 s 1(2), Schedule Pts I; and the Customs and Excise Management Act 1979 Sch 4 paras 1, 12 Table Pt 1). See also *The Roumanian* [1915] P 26; affd [1916] 1 AC 124, PC.

5 See the Naval Prize Act 1864 s 49 (amended by the Statute Law Revision Act 1893; and the Customs and Excise Management Act 1979 Sch 4 paras 1, 12 Table Pt 1).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(4) CONDEMNATION OF PRIZE/838. Sentence of condemnation.

(4) CONDEMNATION OF PRIZE

838. Sentence of condemnation.

The object of bringing in a captured ship or cargo for adjudication is that a sentence of condemnation may be pronounced by a competent court, namely, the Prize Court¹, decreeing the capture to have been rightly made. It is for the claimant to show that there was no reasonable suspicion justifying the seizure or to displace such reasonable suspicion as in fact exists². If there is concealment of material matters within the claimant's knowledge, the court may draw inferences adverse to his claim and condemn the goods in question, and, it seems, ships³.

1 As to the Prize Court see PARA 847 et seq post.

2 *The Louisiana* [1918] AC 461, PC; *Conservas Cerqueira Lda v HM Procurator General, The Monte Contes* [1944] AC 6 at 9, PC; *The Charles Racine, The Petter* (1944) 1 Lloyd Pr Cas NS 177 (affd (1947) 1 Lloyd Pr Cas NS 215, PC). The claimant who succeeds in establishing a neutral destination is not required also to prove that the goods will not find their way into enemy territory: *Conservas Cerqueira Lda v HM Procurator General, The Monte Contes* supra.

3 *The Louisiana* [1918] AC 461 at 465, PC; *The Henrick and Maria* (1799) 4 Ch Rob 43.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(4) CONDEMNATION OF PRIZE/839. Effect of sentence of condemnation.

839. Effect of sentence of condemnation.

A sentence of condemnation is necessary in order to vest the property in the captors or in their transferees¹, and is conclusive as regards the property in the condemned ship or goods². The sentence of a prize court of competent jurisdiction condemning captured property is a judgment in rem³, giving a good title as against all the world, the grounds of the condemnation as well as the condemnation itself being regarded as conclusive⁴. The Crown retains the right to release a captured ship or goods before condemnation has been pronounced⁵.

1 *The Flad Oyen* (1799) 1 Ch Rob 135; *The Leda* [1919] P 264.

2 *The Purissima Conception* (1805) 6 Ch Rob 45; *The Victoria (otherwise The Alfred the Great)* (1809) Edw 97. In *The Cornelia* (1810) Edw 244 it was held that a British owner whose ship had been condemned by a foreign prize court had no right to the possession of the ship when subsequently recaptured, but as to the owner's statutory right to have his recaptured property restored on payment of salvage see the Naval Prize Act 1864 s 40 (as amended); and PARA 842 post. As to the Prize Court see PARA 847 et seq post.

3 As to judgments generally see CIVIL PROCEDURE vol 11 (2009) PARA 1136 et seq.

4 *Hughes v Cornelius* (1682) 2 Show 232.

5 *The Salerno* [1946] P 189 (see PARA 842 note 7 post); *The Leda* [1919] P 264; *The Corsican Prince* [1916] P 195 at 205.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(4) CONDEMNATION OF PRIZE/840. Setting aside condemnation.

840. Setting aside condemnation.

The Prize Court¹ has an inherent power to set aside its own decrees of condemnation so as to let in claims made in good faith by parties who have not been heard and who have not had an opportunity of appearing; but the power is discretionary, and should not be exercised except in cases of fraud or where substantial injustice would otherwise result and where the application has been promptly made².

1 As to the Prize Court see PARA 847 et seq post.

2 *The Orcoma* (1915) 1 Br & Col Pr Cas 402; *The Bolivar* [1916] 2 AC 203, PC; *The Alfred Nobel* [1918] P 293; *The Mount Temple* (1921) 9 LI L Rep 475; *The Uhenfels* (1946) 1 Lloyd Pr Cas NS 222; *The Inginer N Vlassopol* (1951) 1 Lloyd Pr Cas NS 307. Cf *The Vesta* (1921) 9 LI L Rep 172.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(5) RANSOM/841. Nature of the contract of ransom.

(5) RANSOM

841. Nature of the contract of ransom.

Ransom is a contract entered into between the captors and the commander of a captured ship, by which the captors permit the captured ship to proceed under safe conduct in consideration of a sum of money paid or promised by the commander in his own name and that of the owners of the captured ship. The practice of payment of ransom is largely obsolete and is prohibited by law in many countries¹.

The ransoming of British ships or goods² by British subjects is not permitted³.

1 See generally 2 Oppenheim's International Law (7th Edn) 493-494, 867.

2 For the meaning of 'ship' and 'goods' see PARA 803 note 4 ante.

3 It was permitted by the Naval Prize Act 1864 s 45 (which did not apply to aircraft: Prize Act 1939 s 1(3), Schedule Pt II), only if authorised by Order in Council, but the Naval Prize Act 1864 s 45 was repealed by the Supreme Court Act 1981 s 152(4), Sch 7.

Under the Naval Discipline Act 1957 it is, moreover, an offence for a commanding officer of one of Her Majesty's ships, vessels or aircraft to make an agreement for ransoming any ship, vessel or aircraft or goods taken as prize: see s 23(b); and ARMED FORCES.

UPDATE

841 Nature of the contract of ransom

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(6) PRIZE SALVAGE AND PRIZE BOUNTY/842. Prize salvage.

(6) PRIZE SALVAGE AND PRIZE BOUNTY

842. Prize salvage.

If a ship, aircraft, or goods¹ belonging to a British subject, after being taken as prize by the enemy, is, or are, retaken by any of Her Majesty's ships of war², or any of Her Majesty's military aircraft³, the prize must be restored to the owner on his paying as prize salvage⁴ one-eighth of the value of the prize as ascertained by the Prize Court⁵, or such a sum, not exceeding one-eighth of the estimated value, as may be agreed on between the owner and the recaptors and approved by court order⁶. Where, however, a ship or aircraft after being so taken is sent forth or used by any of Her Majesty's enemies as a ship of war or as a military aircraft, restitution is not authorised and the ship or aircraft must be adjudicated on as in the other cases of prize⁷.

1 For the meaning of 'ship' and 'goods' see PARA 803 note 4 ante.

2 'Any of Her Majesty's ships of war' includes any of Her Majesty's vessels of war, and any hired armed ship or vessel in Her Majesty's service: Naval Prize Act 1864 s 2. This definition applies for the purposes of the Prize Court Rules 1939, SR & O 1939/1466 (as to which see PARA 852 post): Ord 1 r 3.

3 'Any of Her Majesty's military aircraft' includes any aircraft belonging to Her Majesty's naval, military or air forces and any hired armed aircraft in Her Majesty's service: Naval Prize Act 1864 s 2 (definition added by the Prize Act 1939 s 1(2), Schedule Pt I). This definition applies for the purposes of the Prize Court Rules 1939, SR & O 1939/1466: Ord 1 r 3.

4 The law relating to prize salvage is in general unaffected by the Crown Proceedings Act 1947: s 40(2)(a) (as to which see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103).

5 Where, however, the recapture has been made under circumstances of special difficulty or danger, the Prize Court may award a larger part than one-eighth, but not exceeding one-quarter: Naval Prize Act 1864 s 40 proviso. As to the Prize Court see PARA 847 et seq post.

6 See *ibid* s 40 (amended by the Prize Act 1939 Schedule Pt I). The general rule is that no salvage is due for the recapture of neutral vessels, unless the recaptured vessel was practically liable to be confiscated by the enemy, whether rightfully or wrongfully: *The Pontoporos* [1916] P 100.

7 Naval Prize Act 1864 s 40 proviso (amended by the Prize Act 1939 Schedule Pt I). Notwithstanding this prohibition on restitution where the ship taken in prize had been used by the enemy as a ship of war, the Crown may, by virtue of its prerogative under the Naval Prize Act 1864 s 55(4) (as amended), release the ship on recapture without proceeding to adjudication in prize: *The Salerno* [1946] P 189. As to salvage generally see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 876-986.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(6) PRIZE SALVAGE AND PRIZE BOUNTY/843. Proceedings for recovery of prize salvage.

843. Proceedings for recovery of prize salvage.

If the recaptured ship does not within six months return to a United Kingdom port, or a recaptured aircraft does not within that period return to a place within the United Kingdom, the recaptors may institute proceedings against the ship, aircraft or goods in the Prize Court to recover prize salvage¹. However, no proceedings to enforce a claim for services rendered in relation to a ship, aircraft or goods taken by the enemy may be instituted without the consent² of the Secretary of State³.

1 Naval Prize Act 1864 s 41 (amended by the Prize Court (Procedure) Act 1914 s 1(1), Schedule; and the Prize Act 1939 s 1(2), Schedule Pt I). For the meaning of 'ship' and 'goods' see PARA 803 note 4 ante. As to the Prize Court see PARA 847 et seq post.

2 Evidence of the consent may be given by means of a document purporting to give the consent and to be signed on behalf of the Secretary of State: Prize Salvage Act 1944 s 1(4). Section 1 also refers to the Admiralty giving consent, but references to the Admiralty are to be construed as references to the Secretary of State by virtue of the Defence (Transfer of Functions) Act 1964 s 3(2). In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

3 Prize Salvage Act 1944 s 1(1); and see note 2 supra. Equally no such claim may be made or relied on by way of defence in any other proceedings, without the consent of the Secretary of State: s 1(3); and see note 2 supra. The countries to which the Act applies include the United Kingdom, the Channel Islands and the Isle of Man, certain colonies, British protectorates, trust territories and foreign countries or territories where Her Majesty for the time being has jurisdiction, other than countries or territories administered by Her Majesty's government in a Commonwealth member country: see s 2(1) (amended by the Statute Law (Repeals) Act 1995). Where the Prize Salvage Act is applied to any country or territory outside the United Kingdom it has effect subject to any adaptations or modifications made by Order in Council: see the Prize Salvage Act 1944 s 2(2).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(6) PRIZE SALVAGE AND PRIZE BOUNTY/844. Applications for prize salvage.

844. Applications for prize salvage.

A ship¹ or aircraft brought within the jurisdiction for adjudication after recapture from the enemy, but liable to restoration on payment of salvage, must be proceeded against by writ², and within 12 days after service of the writ the owner³ must file an affidavit setting out the value of the property alleged to have been salvaged or an agreement with the recaptors as to such value⁴.

Where a ship or aircraft, on recapture from the enemy by any of Her Majesty's ships or military aircraft, or by any persons other than its own crew, which, if brought within the jurisdiction by the recaptors, would have been liable to restoration on payment of salvage, is with the recaptors' consent allowed to prosecute its voyage or otherwise parts company with or ceases to be in possession of the recaptors, or where a ship or aircraft captured by the enemy is recaptured by its crew, the recaptors may take proceedings to recover the salvage due either in rem or in personam⁵.

If no appearance is entered the recaptors may, subject to the filing of an affidavit of service⁶, set the case down for hearing by default⁷; in all other cases the recaptors may, at any time after entering appearance, apply for a day for the hearing⁸.

1 For the meaning of 'ship' see PARA 803 note 4 ante.

2 Ibid Ord 30 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post. The judge may order the ship or aircraft to be proceeded against on pleadings in the same form and manner as all other ships or aircraft captured as prize: Ord 30 r 1. 'Judge' means any judge of the court acting in the exercise of prize jurisdiction: Ord 1 r 1. For forms of writ and pleadings in prize salvage see App A Forms 5, 13(ii).

3 'Owner' includes any person to whom by operation of law the property in a ship or aircraft seized or taken as prize has wholly or partly passed, and includes any person intervening in a cause on behalf of an owner or intervening and claiming or alleging an interest in such a ship or aircraft: Prize Court Rules 1939, SR & O 1939/1466, Ord 1 r 1.

4 Ibid Ord 30 r 3. For meaning of 'recaptor' see 853 note 5 post. As to the mode of filing see PARA 854 note 6 post. For forms of affidavit and agreement of value see App A Forms 56, 57.

5 Ibid Ord 30 r 2.

6 For a form of affidavit of service see ibid App A Form 10.

7 Where a claim is made by the owner and no appearance is entered or default is made in filing an affidavit or agreement of value, or where the recaptors are dissatisfied with the value deposed to, the judge may, on the application of the recaptors, direct the property to be appraised by the marshal or otherwise valued: ibid Ord 30 r 4.

8 Ibid Ord 30 r 5.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(6) PRIZE SALVAGE AND PRIZE BOUNTY/845. Enforcement of decree and payment.

845. Enforcement of decree and payment.

Where at the time of a decree or order awarding prize salvage¹ the ship² or aircraft is under arrest, the decree or order may be enforced by sale and payment of the amount due out of the proceeds of sale³. Where a ship or aircraft under arrest has been released on security being

given, the decree or order awarding prize salvage may be enforced⁴: (1) if money has been paid into court, by order for payment out⁵; or (2) if bail has been given, by order for payment against the bail, and execution against the bail in default of payment⁶. Where the proceedings for prize salvage have been taken in personam, the decree or order may be enforced against the owner⁷, and execution issued against him⁸. Where salvage is awarded to any persons other than officers and crews of Her Majesty's ships of war⁹ or military aircraft¹⁰, either alone or conjointly with such officers and crews, the judge may make an order apportioning the salvage between such persons or between such persons and such officers and crews, in any proportions that he thinks fit¹¹, but no decree or order for the payment of salvage to salvors may be made unless and until the judge is satisfied that no persons other than those salvors are entitled to share in the salvage¹².

The Prize Court has equitable jurisdiction to award civil salvage for services rendered to a ship before seizure¹³.

1 For forms of decree in prize salvage see the Prize Court Rules 1939, SR & O 1939/1466, App A Form 53 (xiii)-(xvii). As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post.

2 For the meaning of 'ship' see PARA 803 note 4 ante.

3 Prize Court Rules 1939, SR & O 1939/1466, Ord 30 r 6.

4 Ibid Ord 30 r 7.

5 Ibid Ord 30 r 7(1).

6 Ibid Ord 30 r 7(2).

7 For the meaning of 'owner' see PARA 844 note 3 ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 30 r 8. If the owner makes default in payment, the judge may direct a warrant to issue for the arrest of the ship or aircraft on its coming within the jurisdiction, and may order a sale of it and payment of the award out of the proceeds: Ord 30 r 8. Every warrant, release, commission, and any other instrument to be executed must be issued under the seal of the court: see Ord 35. For the meaning of 'court' see PARA 860 note 4 post.

9 'Ship of war' includes armed ships: ibid Ord 1 r 1.

10 'Military aircraft' includes armed aircraft: Ord 1 r 1.

11 Ibid Ord 30 r 9. This must not be taken to authorise the distribution of salvage among the officers and crews or to affect any royal proclamation as to the distribution of prize money: Ord 30 r 9 proviso. As to the procedure concerning distribution and investment of prize moneys see Ord 34.

12 Ibid Ord 30 r 10.

13 *France Fenwick Tyne and Wear Co v Procurator General, The Prins Knud* [1942] AC 667, [1942] 2 All ER 453, PC. As to the Prize Court see PARA 847 et seq post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/1. THE LAW OF PRIZE/(6) PRIZE SALVAGE AND PRIZE BOUNTY/846. Prize bounty.

846. Prize bounty.

In pursuance of the prerogative to declare war and make peace the Crown has the right to all acquisitions of war, including prizes¹. Formerly a proportion of captured prizes could be granted as prize bounty by the monarch, but this right to grant prize bounty is no longer exercisable², although it appears that the Crown retains the prerogative right to grant bounty generally, and,

beyond the limits of prize droits, to British subjects suffering hardship or injustice by reason of the Crown's wartime activities³.

1 *The Rebeckah* (1799) 1 Ch Rob 227; *The Elsebe* (1804) 5 Ch Rob 173. As to the procedure for claims for prize bounty see the Prize Court Rules 1939, SR & O 1939/1466, Ord 33. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post.

2 Prize Act 1948 s 9(2). As to the abolition of the prerogative right to grant prize droits see PARA 804 ante.

3 *The Belvidere* (1813) 1 Dods 353 at 358; *The Marie Glaeser* [1914] P 218. During the 1914-18 war the Prize Claims Committee dealt with such cases (*The Odessa* [1916] 1 AC 145, PC; *The Sydney* [1916] P 300), but during the 1939-45 war they were determined by the Procurator-General (359 HC Official Report (5th series) col 494).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(1) BRITISH PRIZE COURTS/(i) The Prize Court in the United Kingdom/847. Jurisdiction of the High Court of Justice.

2. EXERCISE OF PRIZE JURISDICTION

(1) BRITISH PRIZE COURTS

(i) The Prize Court in the United Kingdom

847. Jurisdiction of the High Court of Justice.

The High Court of Justice as a prize court has all such jurisdiction as is conferred on it by the Prize Acts 1864 to 1944¹ and has all such other jurisdiction on the high seas and throughout Her Majesty's dominions and in every place where she has jurisdiction as, under any Act relating to naval prize or otherwise, the former High Court of Admiralty possessed when acting as a prize court². The prize jurisdiction of the High Court is assigned to the Queen's Bench Division³.

The jurisdiction extends to all prize matters, including the seizure of aircraft and any goods in them⁴. It attaches at the time of and from the mere fact of seizure, and intention to seize in prize is not essential⁵. The jurisdiction extends also to all incidental matters⁶, and includes an equitable jurisdiction to award civil salvage for service rendered to a ship before seizure⁷. It is a permanent jurisdiction and, unlike that of prize courts in British possessions⁸, requires no commission from the Queen, proclamation of war or other executive act to bring it into operation.

Appeals in prize cases lie to the Judicial Committee of the Privy Council⁹.

The High Court has power to enforce all orders or decrees of Colonial Courts of Admiralty or Vice-Admiralty Prize Courts¹⁰ in prize matters, and of the Judicial Committee of the Privy Council in prize appeals¹¹. As respects any cause or matter within its jurisdiction it may declare that any order or decree made by it is to be enforceable within the jurisdiction of another prize court and may enforce any order or decree which has been declared to be enforceable within its jurisdiction by another prize court¹².

1 Supreme Court Act 1981 s 27(a). As to the Prize Acts 1864 to 1944 see PARA 803 note 4 ante. Under the Naval Prize Act 1864 the former High Court of Admiralty (see note 2 infra) and every court of Admiralty or of Vice-Admiralty, or other court exercising Admiralty jurisdiction in Her Majesty's dominions, for the time being

authorised to take cognisance of and judicially proceed in matters of prize, was a prize court within the meaning of that Act: s 3.

2 Supreme Court Act 1981 s 27(b) (replacing the Supreme Court of Judicature (Consolidation) Act 1925 s 23 (repealed)); and see the Naval Prize Act 1864 s 4. Prize jurisdiction was formerly exercised by the High Court of Admiralty under a commission issued by the Crown. Later that court acquired a statutory jurisdiction under ss 3, 4, which was transferred to the High Court of Justice by the Supreme Court of Judicature Act 1873 s 16(5) (repealed), and was assigned to the Probate, Divorce and Admiralty Division by s 34 (repealed): Supreme Court of Judicature (Consolidation) Act 1925 s 56(3)(b) (as originally enacted). The jurisdiction is now exercised by the High Court (Supreme Court Act 1981 ss 27(a), 151(5), Sch 4 para 1(1)) in the Queen's Bench Division (see the text and note 3 *infra*). The jurisdiction of the High Court of Admiralty entirely excluded that of the common law courts in any matter relating to prize: *Le Caux v Eden* (1781) 2 Doug KB 594; *Mitchell v Rodney* (1783) 2 Bro Parl Cas 423, HL; *Faith v Pearson* (1816) 6 Taunt 439; *The Elize* (1854) Spinks 88 at 97.

3 Supreme Court Act 1981 s 61(1), Sch 1 para 2(c).

4 See the Prize Act 1939 s 1(1); and PARA 801 ante. This applies notwithstanding that the aircraft is on or over land: s 1(1). For the meaning of 'goods' see PARA 803 note 4 ante.

5 *Schiffahrt-Treuhand GmbH v HM Procurator-General* [1953] AC 232, [1953] 1 All ER 364, PC.

6 *Le Caux v Eden* (1781) 2 Doug KB 594; *The Sorfareren* (1915) 4 Lloyd Pr Cas 174; *The Zamora* [1916] 2 AC 77, PC (requisitioning); *The St Helena* [1916] 2 AC 625, PC (freight); *The Katwijk* [1916] P 177 (demurrage); *The Corsican Prince* [1916] P 195 (freight); *The Chateaubriand* (1916) 2 Br & Col Pr Cas 69 (salvage). The court has exclusive jurisdiction over questions of prize or no prize and all questions which depend for their proper determination on the question of prize or no prize: *Egyptian Bonded Warehouses Co Ltd v Yeyasu Goshi Kaisha* [1922] 1 AC 111, PC. As to other matters to which the jurisdiction extends see PARA 848 post.

7 *France Fenwick Tyne and Wear Co Ltd v Procurator General, The Prins Knud* [1942] AC 667, [1942] 2 All ER 453, PC.

8 See PARA 849 post.

9 See PARAS 886-887 post.

10 See PARA 849 post.

11 See the Naval Prize Act 1864 s 4. As to the Judicial Committee of the Privy Council see PARAS 886-887 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 311; COURTS.

12 See the Prize Courts Act 1915 s 2. See also *The Regina d'Italia* [1925] P 123.

UPDATE

847 Jurisdiction of the High Court of Justice

NOTES 1-3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(1) BRITISH PRIZE COURTS/(i) The Prize Court in the United Kingdom/848. Other matters to which the jurisdiction extends.

848. Other matters to which the jurisdiction extends.

The prize jurisdiction of the High Court extends to all matters relating to booty of war¹, to any ship or goods² taken by any of Her Majesty's naval or naval and military forces while acting in conjunction with any allied forces³, and to any ship or goods taken by any of Her Majesty's naval or naval and military forces in a land expedition against a fortress or possession of the enemy, if the goods belong to the enemy state or to a public trading company of the enemy

exercising powers of government, or if the ship is taken in waters defended by or belonging to the fortress or possession⁴.

Cases arising out of the exercise of any belligerent right on the part of the Crown or which would be cognisable in a prize court within Her Majesty's dominions if brought between private persons fall within the Admiralty jurisdiction of the High Court⁵.

1 *Re Banda and Lirwee Booty* (1866) LR 1 A & E 109. As to booty see PARA 805 ante.

2 For the meaning of 'ship' and 'goods' see PARA 803 note 4 ante.

3 See the Naval Prize Act 1864 s 35, which does not apply in relation to any aircraft or goods in aircraft so taken: Prize Act 1939 s 1(3), Schedule Pt II. The procedure is as in the case of any other ship captured as prize: Prize Court Rules 1939, SR & O 1939/1466, Ord 31. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post.

4 See the Naval Prize Act 1864 s 34 (see also PARA 805 ante), which does not apply in relation to any aircraft or goods in aircraft so taken: Prize Act 1939, Schedule Pt II. The procedure is as in the case of any other ship captured as prize: Prize Court Rules 1939, SR & O 1939/1466, Ord 31. For the meaning of 'ship' and 'goods' see PARA 803 note 4 ante.

5 See the Crown Proceedings Act 1947 ss 1, 13, 23(2)(a), Sch 1 para 2; the Naval Prize Act 1864 s 52 (repealed); and the CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARAS 110-111, 117. In general, the Crown Proceedings Act 1947 does not apply to proceedings within the jurisdiction of the High Court as a prize court: s 40(2)(a).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(1) BRITISH PRIZE COURTS/(ii) Prize Courts in British Possessions and Elsewhere/849. Local prize courts.

(ii) Prize Courts in British Possessions and Elsewhere

849. Local prize courts.

Her Majesty or the Secretary of State¹ may at any time commission as a prize court in a British possession a Vice-Admiralty Court² or a Colonial Court of Admiralty³ or establish a Vice-Admiralty Court ad hoc with authority to act on a proclamation being issued by the Vice-Admiral of that possession that war has broken out between Her Majesty and a foreign state⁴. The power extends to the establishing of prize courts in places outside Her Majesty's dominions⁵, and the provisions of the Colonial Courts of Admiralty Act 1890 may be applied by Order in Council⁶ to courts of Her Majesty exercising jurisdiction outside Her Majesty's dominions⁷.

1 As to the Secretary of State see PARA 843 note 2 ante.

2 The general power to establish Vice-Admiralty Courts in British possessions lies under the Colonial Courts of Admiralty Act 1890: see s 9 (as amended); and COMMONWEALTH vol 13 (2009) PARA 838. A Vice-Admiralty Court may also be established for the purpose of acting as a prize court: see the Prize Courts Act 1894 s 2(3); and PARA 850 post. On the commencement of the Colonial Courts of Admiralty Act 1890 in a British possession, any Vice-Admiralty Court then existing there was abolished: see s 17 (repealed). 'British possession' means any part of her Majesty's dominions outside the United Kingdom: see the Interpretation Act 1978 s 5, Sch 1.

3 Subject to the power of the Queen in Council to prevent the vesting of any particular jurisdiction in the courts of a British possession not having a separate legislature, Colonial Courts of Admiralty consist of every court of law in a British possession which is declared to be a Colonial Court of Admiralty, and if no such declaration is in force every court of law having unlimited civil jurisdiction is a Colonial Court of Admiralty: see the Colonial Courts of Admiralty Act 1890 s 2; and COMMONWEALTH vol 13 (2009) PARA 838. The provisions of the Colonial Courts of Admiralty Act 1890 may be applied by Order in Council to courts of Her Majesty exercising

jurisdiction in places outside Her Majesty's dominions: see s 12; the Foreign Jurisdiction Acts 1890 and 1913. As to admiralty jurisdiction see COMMONWEALTH vol 13 (2009) PARA 838.

4 See the Prize Courts Act 1894 s 2(1)-(3); the Defence (Transfer of Functions) Act 1964 ss 1(2), 3(2); and PARA 843 note 2 ante.

5 See the Prize Act 1939 s 2(1). It thus extends to protectorates, trust territories and other countries where for the time being Her Majesty has prize jurisdiction: see s 2(1)(a)-(c). The Secretary of State may appoint a judge, registrar and marshal and any other officer of a Vice-Admiralty Court so established (s 2(2); the Defence (Transfer of Functions) Act 1964 ss 1(2), 3(2)); and see PARA 843 note 2 ante. Where any prize court is so established ad hoc, the proclamation that war has broken out is issued by an authority prescribed by Order in Council instead of by the Vice-Admiral (Prize Act 1939 s 2(1)).

6 See eg the Brunei (Prize Court) Order in Council 1957, SI 1957/858.

7 See the Colonial Courts of Admiralty Act 1890 s 12; the Foreign Jurisdiction Acts 1890 and 1913. As to admiralty jurisdiction see COMMONWEALTH vol 13 (2009) PARA 838.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(1) BRITISH PRIZE COURTS/(ii) Prize Courts in British Possessions and Elsewhere/850. Nature of jurisdiction.

850. Nature of jurisdiction.

The jurisdiction in prize of a local court is not inherent but derives from the commission or warrant constituting it as a prize court¹; and the commission or warrant may authorise either a Vice-Admiralty Court or a Colonial Court of Admiralty to act as a prize court of Admiralty to act as a prize court and may establish a Vice-Admiralty Court for that purpose². A commission, warrant or instructions commissioning or regulating the procedure of a prize court may be revoked or altered from time to time³; but a court duly authorised to act as a prize court during any war must, after the conclusion of the war, continue so to act in relation to, and finally dispose of, all things and matters which arose during the war⁴.

A commission or warrant issued before 1 September 1939, and then in force, has effect as if any reference in it to ships included aircraft⁵.

1 See the Prize Courts Act 1894 s 2(1); the Prize Act 1939 s 2(1); and PARA 849 ante.

2 Prize Courts Act 1894 s 2(3). Colonial Courts of Admiralty and Vice-Admiralty Courts so commissioned or established are prize courts: see the Naval Prize Act 1864 s 3; the Prize Act 1939 s 3; and PARA 847 ante. The power of the Queen in Council to make rules for regulating the procedure of prize courts extends to making rules for carrying the Prize Courts Act 1915 into effect: s 3(3). As to fees payable in local prize courts see PARA 878 post.

3 Prize Courts Act 1894 s 2(4).

4 Ibid s 2(5).

5 Prize Act 1939 s 2(3). For the meaning of 'ship' see PARA 803 note 4 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(1) BRITISH PRIZE COURTS/(ii) Prize Courts in British Possessions and Elsewhere/851. Extent of jurisdiction.

851. Extent of jurisdiction.

The prize jurisdiction of a local court is local, being confined to the adjudication of property brought within the defined limits¹, although every prize court in any British possession has power to and must enforce, within its jurisdiction, all orders and decrees of the Judicial Committee in prize appeals and of the High Court in prize causes².

1 *The Carel and Magdalena* (1800) 3 Ch Rob 58. See also Jenkyns's British Rule and Jurisdiction beyond the Seas 34. However, proceedings may be transferred from one prize court to another: see the Prize Courts Act 1915 s 1 (amended by the Statute Law Revision Act 1927), Prize Courts Act 1915 s 3 (amended by the Prize Act 1939 s 1(2), Schedule Pt I). See also the Naval Prize (Procedure) Act 1916 s 2, which extends the Prize Courts Act 1915 s 1 (as amended) to apply, with necessary modifications, to proceedings pending at any time in a prize court, whether or not the proceedings are against any ship or cargo, provided that where the proceedings are against a person in the service of His Majesty, or of the Government of any part of His Majesty's Dominions, or of any Government department, the court may (except in the case of proceedings in the High Court of Justice in England) on the application of the proper officer of the Crown, make an order transferring the proceedings to another prize court. For the meaning of 'ship' see PARA 803 note 4 ante.

2 Naval Prize Act 1864 s 9. See also the Prize Courts Act 1915 s 2; and PARA 847 text and note 12 ante. As to prize appeals see PARAS 886-887 post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/852. The Prize Court Rules 1939.

(2) PROCEDURE

(i) Rules and Preliminary Procedure

852. The Prize Court Rules 1939.

The procedure and practice of prize courts are in general regulated by the Prize Court Rules 1939¹, but in all cases not provided for by these rules the practice of the former High Court of Admiralty of England in prize proceedings must be followed, or such other procedure as the judge² may direct³.

Unless the contrary intention appears, the rules relating to ships⁴ and aircraft extend and apply, with necessary changes, to goods and to freight, if any, due or to grow due⁵.

1 The Prize Court Rules 1939, SR & O 1939/1466, were made under the Prize Courts Act 1894 s 3, and were brought into force by Order in Council dated 19 October 1939, SR & O 1939/1466. They are set out in the Schedule to that Order, and are referred to as the Prize Court Rules 1939. On the making of that Order the Prize Court Rules 1914, SR & O 1914/1407 (as amended), were revoked except in their application to the Union of South Africa and Eire, and the current rules came into force in the United Kingdom, the Channel Islands, the Isle of Man, Australia, New Zealand, every colony and British protectorate and every other country or territory in which Her Majesty for the time being has jurisdiction in prize to the extent of that jurisdiction: see the Order in Council dated 19 October 1939.

The Rules of the Supreme Court did not apply to proceedings in the High Court when acting as a prize court: RSC Ord 1 r 2(2) Table para 4. As from 26 April 1999, the Civil Procedure Rules (CPR) replace the Rules of the Supreme Court and the County Court Rules. Certain provisions of the RSC and CCR are saved in a modified form in CPR Schs 1 and 2 respectively. The CPR apply to proceedings issued on or after 26 April 1999, and new steps taken in existing proceedings, as prescribed: CPR 51; *Practice Direction--Transitional Arrangements* (1999) PD51. The Civil Procedure Rules 1998, SI 1998/3132 ('CPR') (as amended) apply to all proceedings in county courts, the High Court, and the Civil Division of the Court of Appeal: CPR 2.1(1). However, these rules do not apply to proceedings in the High Court when acting as a Prize Court: CPR 2.1(2). As to the Civil Procedure Rules 1998 see CIVIL PROCEDURE.

2 The Prize Court Rules 1939, SR & O 1939/1466, Ord 45 refers to 'the President', who is defined as the President of the Probate, Divorce and Admiralty Division of the High Court or the principal judge of a court other

than the High Court, as the case may be: Ord 1 r 1. The functions of the President are now exercised by such one of the puisne judge of the High Court as the Lord Chancellor may from time to time nominate for the purpose: cf the Administration of Justice Act 1970 s 2(2), (5) (repealed); Supreme Court Act 1981 s 151(5), Sch 4 para 1(1).

3 Prize Court Rules 1939, SR & O 1939/1466, Ord 45. See also *The Glenroy* [1943] P 109 at 127.

4 For the meaning of 'ship' see PARA 803 note 4 ante.

5 See the Prize Court Rules 1939, 1939/1466, Ord 1 r 2 (see PARA 803 note 4 ante); and *The Antares* (1915) 31 TLR 290.

UPDATE

852 The Prize Court Rules 1939

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/853. Institution and conduct of proceedings.

853. Institution and conduct of proceedings.

A cause¹ for the condemnation of a ship² or aircraft as prize³ must be instituted in the name of the Crown, but, with the consent of the Crown⁴, the proceedings may be conducted by the captors⁵ or any parties⁶ to whom the ship or aircraft would on condemnation be condemned as prize⁷. All other causes may be instituted in the name of the parties claiming or proceeding⁸.

On the application of either party the judge may enlarge or abridge the time prescribed for doing any act or taking any proceedings upon such terms as to him seem fit⁹.

1 'Cause' means any prize proceeding instituted by writ: Prize Court Rules 1939, SR & O 1939/1466, Ord 1 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

2 For the meaning of 'ship' see PARA 803 note 4 ante.

3 This includes proceedings where the ship or aircraft has been destroyed or lost: see the Prize Court Rules 1939, SI 1939/1466, Ord 2 r 6.

4 The consent is given through the proper officer of the Crown: *ibid* Ord 2 r 3. 'Proper officer of the Crown' means Her Majesty's Procurator General or other law officer or agent for the Crown authorised to conduct prize proceedings on behalf of the Crown within the jurisdiction of the court: Ord 1 r 1. The Procurator General is the Treasury Solicitor (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 541).

5 'Captor' means any person taking or seizing, or having taken or seized, any ship, aircraft or goods as prize and, for the purposes of proceedings, includes the captor's solicitor, if any, or the proper officer of the Crown, and includes recaptor: *ibid* Ord 1 r 1.

6 'Party' for the purposes of proceedings in any cause or matter includes the proper officer of the Crown and the party's solicitor, if any: *ibid* Ord 1 r 1.

7 *Ibid* Ord 2 r 3. See also *The Oscar II* [1920] AC 748, PC.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 2 r 3.

9 *Ibid* Ord 38 r 2. Time may be enlarged even if the application is made after the expiration of the time prescribed: Ord 38 r 2. In all matters relating to the time for doing any act or taking any proceeding, the

ordinary procedure with regard to time in force in the High Court or, in the case of another court, the procedure in regard to time in force in that court in the exercise of its ordinary jurisdiction prevails: Ord 38 r 1.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/854. Issue of writ.

854. Issue of writ.

Every cause¹ in matters of prize must be instituted by a writ² issued out of the registry³ in the prescribed form⁴. No writ for the condemnation of a ship⁵ or aircraft as prize may be issued until an affidavit has been filed⁶ as to ship papers or aircraft papers⁷, unless the judge otherwise orders⁸. Before a writ may be issued on the application of an alien enemy an affidavit stating shortly the grounds of the claim must be filed⁹.

Unless previously sworn or otherwise ordered, an affidavit as to ship or aircraft papers must be sworn within ten days after the ship or aircraft is brought in for adjudication or seized within the jurisdiction¹⁰. The affidavit must be filed in the registry with the papers exhibited to it¹¹.

1 For the meaning of 'cause' see PARA 853 note 1 ante. Causes must be numbered in the order in which they are instituted, and the number given is the distinguishing number of the cause: see Ord 2 r 2. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

2 Prize Court Rules 1939, SR & O 1939/1466, Ord 2 r 1.

3 Ibid Ord 2 r 4; and see *The Gudrum Maersk* (1940) 1 Lloyd Pr Cas NS 42, Bombay HC. 'Registry' means the Admiralty Registry of the High Court or of any other prize court: see the Prize Court Rules 1939, SR & O 1939/1466, Ord 1 r 1. The registry must be open for the transaction of prize matters at such times as it is open for the transaction of the court's ordinary business (Ord 40), although the registrar must arrange for the issue of process in urgent cases when the registry is closed (Ord 40 proviso). Application for the issue of a writ of condemnation must be made by the proper officer of the Crown (as to whom see PARA 853 note 4 ante): Ord 2 r 5. The issue of such a writ, and the fact of its service, must be advertised by the registrar in such newspapers and on as many occasions as he thinks proper (Ord 2 r 21), and where a writ is issued in respect of a ship or aircraft purporting to be neutral, he must send notice of it to the consular officer of the state to which the ship or aircraft purports to belong (Ord 2 r 23). 'Registrar' means the Admiralty Registrar of the High Court or any assistant or deputy of his, or the Admiralty Registrar of any other prize court, or such other officer as the court appoints to carry out the registrar's duties under the Prize Court Rules 1939: Ord 1 r 1. As to the Admiralty Registrar see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 45, 140 et seq.

4 Ibid Ord 2 rr 5, 6 App A Forms 2, 3 (condemnation); Ord 2 r 7 App A Form 4 (restitution or damages against captor); Ord 2 r 8 App A Form 5 (prize salvage); Ord 2 r 9 App A Form 6 (joint capture).

5 For the meaning of 'ship' see PARA 803 note 4 ante.

6 Documents are filed by being left in the registry with a minute stating their nature and the date of filing: Prize Court Rules 1939, SR & O 1939/1466, Ord 37 r 1. Several documents may be filed with one minute: Ord 37 r 2. Before filing any document other than an affidavit as to ship or aircraft papers, bail bonds, registry documents and minutes, a copy must be delivered to or served on the other party, and the filed document must be indorsed with a certificate of delivery or service: Ord 37 r 3. For a form of minute see App A Form 59.

7 For the meaning of 'ship papers' and 'aircraft papers' see PARA 834 note 3 ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 2 r 5. For the meaning of 'judge' see PARA 844 note 2 ante.

9 Ibid Ord 2 r 22. See also *The Glenroy* [1943] P 109 at 114-115. For the meaning of 'alien enemy' see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 574.

10 Prize Court Rules 1939, SR & O 1939/1466, Ord 4 r 1. As to the bringing of ship or aircraft papers into court see the Naval Prize Act 1864 s 17 (amended by the Prize Act 1939 s 1(2), Schedule Pt I); and the Prize Court Rules 1939, SR & O 1939/1466, Ord 4 rr 4-6. As to the form of affidavits where ship or aircraft papers are delivered up or found in ordinary course at the time of capture see Ord 4 r 7, App A Form 11. As to affidavits generally see PARA 861 post.

11 Ibid Ord 4 r 2. It must be filed within three days after being sworn or such longer period as the judge may order or, if sworn before the ship or aircraft is brought in for adjudication, within three days after it is brought in: Ord 4 r 2. If the captured ship or aircraft has been destroyed or lost, the affidavit must be filed within three days of the institution of the cause: Ord 4 r 3.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/855. Service of writ.

855. Service of writ.

Service of a writ for the condemnation of a ship¹ or aircraft as prize is by the marshal², and is effected upon the ship or aircraft by fixing the original writ on a conspicuous part of the ship or aircraft³ and by leaving a true copy fixed in its place when the original is removed⁴. Service upon goods or freight where the goods have been landed or transhipped or are not on board is effected by attaching the writ for a short time to the goods and by leaving a copy attached to them, or, if the person having their custody refuses access to them, by showing him the writ and leaving a copy of it with him⁵. Service of the writ upon freight or proceeds of prize in court is effected by showing the writ to the registrar⁶ and by leaving a copy of it with him⁷, and upon freight or proceeds of prize in the hands of any person other than a person holding it on behalf of the court, by showing him the writ and by leaving a copy of it with him⁸.

A writ against a captor for restitution or damages or for prize salvage, except where the ship or aircraft is brought in for adjudication, must be served on the captor⁹.

When the writ has been served it must be filed with a certificate of service indorsed on it¹⁰.

1 For the meaning of 'ship' see PARA 803 note 4 ante.

2 Prize Court Rules 1939, SR & O 1939/1466 Ord 2 r 10. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. 'Marshal' means the Admiralty marshal or such other officer as may be appointed by the court to carry out the marshal's duties under the Prize Court Rules 1939: see Ord 1 r 1. The marshal must execute all instruments issued from the court addressed to him and make returns of them: Ord 39 r 2. He may appoint or employ competent persons as substitutes: see Ord 39 rr 1, 3, 4. The marshal's office must be open for the transaction of prize matters at such times as it is open for the transaction of the business of the court when exercising its ordinary jurisdiction: Ord 40.

3 Where a ship or aircraft has been destroyed or lost, or where goods have been destroyed or lost or removed from the ship or aircraft, service of the writ is effected by the captor filing it in the registry, and notice of the cause may be given in any way the judge directs: *ibid* Ord 2 r 13. For the meaning of 'goods' see PARA 803 note 4 ante. For the meaning of 'captor' see PARA 853 note 5 ante. As to the registry see PARA 854 note 2 ante.

4 *Ibid* Ord 2 r 11(1). The registrar must advertise a writ for condemnation and the fact of its service: Ord 2 r 21. See also PARA 854 note 2 ante.

5 *Ibid* Ord 2 r 11(2).

6 As to the registrar see PARA 854 note 2 ante.

7 Prize Court Rules 1939, SR & O 1939/1466, Ord 2 r 11(4).

8 *Ibid* Ord 2 r 11(3). As to service out of the jurisdiction see Ord 2 rr 16-20; and PARA 856 post.

9 *Ibid* Ord 2 r 14.

10 *Ibid* Ord 2 r 12. The certificate of service must be signed by the person serving the writ; it must bear on it the date and mode of service, and is then evidence of that date and mode of service: Ord 2 r 12.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/856. Substituted service and service out of the jurisdiction.

856. Substituted service and service out of the jurisdiction.

If it appears to the judge that service as prescribed¹ is impracticable or cannot for any reason promptly be effected, he may make an order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise as he thinks just².

Service of a writ or notice of a writ³ may, by leave of the judge⁴, be allowed out of the jurisdiction⁵.

1 I.e. prescribed by the Prize Court Rules 1939, SR & O 1939/1466, Ord 2 rr 10-14: see PARA 855 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

2 Ibid Ord 2 r 15. An application for service otherwise than in the manner prescribed must be supported by an affidavit setting forth the grounds upon which the application is made: Ord 2 r 15.

3 A notice of the writ, in lieu of the writ itself, is served where the person to be served is out of the jurisdiction and is not a British subject, or the ship or aircraft is not the property of a British subject: ibid Ord 2 r 19. Where the notice is served through diplomatic channels it must, if issued by the High Court, be transmitted to the Secretary of State for Foreign Affairs, and, if issued by any other court, to the chief executive authority with a request for further transmission of the notice to the government of the state in which service is to be effected: Ord 2 r 20. The notice is served in the same manner as a notice of a writ of summons was served under the procedure formerly in force in the High Court (see CPR 1998 Sch 1 RSC Ord 11 rr 5-8; and CIVIL PROCEDURE), and must be in the form set out in the Prize Court Rules 1939, SR & O 1939/1466, App A Form 7: Ord 2 r 19. As to the Civil Procedure Rules 1998 see PARA 852 note 1 ante.

4 For the meaning of 'judge' see PARA 844 note 2 ante. An order giving leave to effect service out of the jurisdiction must limit a time after service within which an appearance must be entered: Prize Court Rules 1939, SR & O 1939/1466, Ord 2 r 18.

5 Ibid Ord 2 r 16. An application for leave must be supported by affidavit stating the reason for the deponent's belief that there is good cause for proceeding, the place or country where the person, ship or aircraft to be served is likely to be found and the grounds upon which the application is made: Ord 2 r 17.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/857. Discovery of documents.

857. Discovery of documents.

Any party¹ to a cause² or matter may apply to the judge³ for an order directing any party, other than the proper officer of the Crown⁴, to make discovery on oath⁵ of any documents which are or have been in his possession or power relating to any matter in question in the cause or matter⁶. Thereupon the judge may make such order as he thinks fit⁷, but discovery may not be ordered unless he is of opinion that it is necessary either for disposing fairly of the cause or for saving costs⁸.

On the hearing of any application for discovery, the judge in lieu of ordering the filing of an affidavit of documents may order the party from whom discovery is sought to deliver to the other parties a list of the documents which are or have been in his possession, custody or power relating to the matters in question⁹, although the ordering of such a list does not preclude the judge from afterwards ordering the party to make and file an affidavit of documents¹⁰.

- 1 For the meaning of 'party' see PARA 853 note 6 ante.
- 2 For the meaning of 'cause' see PARA 853 note 1 ante.
- 3 For the meaning of 'judge' see PARA 844 note 2 ante.
- 4 For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante.
- 5 Oaths may be administered by the registrar (as to whom see PARA 854 note 2 ante), any commissioner for oaths or duly authorised officer of customs and excise, or any other person directed or empowered to administer oaths in prize proceedings, or by any person appointed by the judge: see the Prize Court Rules 1939, SR & O 1939/1466, Ord 22 rr 1, 2. As to the manner in which the oath is to be sworn, and the procedure where a person objects to or is incapable of taking an oath see Ord 22 rr 3, 4. For forms see App A Forms 50, 51. See generally CIVIL PROCEDURE vol 11 (2009) PARA 1026. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 post.
- 6 Ibid Ord 9 r 1. See *The Consul Corfitzen* [1917] AC 550, PC; *The Baron Stjernblad* [1918] AC 173, PC; *The Kronprinzessin Victoria* [1918] AC 261, PC. See also SHIPPING AND MARITIME LAW.
- 7 Prize Court Rules 1939, SR & O 1939/1466, Ord 9 r 1. The affidavit to be made by any person against whom an order for discovery has been made must specify which, if any, of the documents mentioned in it he objects to produce: see Ord 9 r 2. As to the form for the affidavit of discovery see App A Form 16.
- 8 Ibid Ord 9 r 1 proviso.
- 9 Ibid Ord 9 r 3. The list must as nearly as possible follow the form of the affidavit of discovery (see note 7 supra): Ord 9 r 3.
- 10 Ibid Ord 9 r 3 proviso.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/858. Inspection and admission of documents.

858. Inspection and admission of documents.

Any party¹ to a cause² may, for the purpose of its hearing, serve a notice on any other party to produce for inspection or for being copied any document in his possession or power relating to any matter in question in the cause³. Similarly, a party may serve a notice⁴ on any other party to admit any document or fact saving all just exceptions⁵.

Any party who has entered a claim, or, by leave of the judge, any other party, may inspect in the registry and take copies of the ship papers or aircraft papers filed in the cause⁶.

- 1 For the meaning of 'party' see PARA 853 note 6 ante.
- 2 For the meaning of 'cause' see PARA 853 note 1 ante.
- 3 Prize Court Rules 1939, SR & O 1939/1466, Ord 9 r 4. For the form of notice see App A Form 17. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. If the party served with notice to produce omits or refuses to do so within the time specified in the notice, the adverse party may apply to the judge for an order to produce, and the judge may in his discretion grant one: Ord 9 r 5. A form of notice to produce documents at the hearing or at an examination of witnesses is in App A Form 18: Ord 9 r 6.
- 4 For a form for notice to admit see ibid App A Form 19.
- 5 Ibid Ord 9 r 8. A party who fails to admit a document or fact after such a notice is liable for the costs of proving the document or fact unless the judge certifies that his refusal to admit was reasonable: Ord 9 r 8. For the form of notice of admission of facts see App A Form 20.

6 Ibid Ord 9 r 7. As to the registry see PARA 854 note 2 ante. For the meaning of 'ship papers' and 'aircraft papers' see PARA 834 note 3 ante. For the meaning of 'judge' see PARA 844 note 2 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/859. Pleadings.

859. Pleadings.

In any cause¹, on the application of any party² by summons, the judge³ may order such pleadings to be delivered as he may think fit⁴. All pleadings must state concisely the facts and the effect of the documents, if any, on which the party relies, and must be signed by the party or his solicitor⁵ or counsel⁶. A pleading may be amended at any time by consent of the parties or by order of the judge⁷. A party may apply to the judge to decide before the trial any question of law raised by any pleading, and the judge may then make such order as he thinks fit⁸.

1 For the meaning of 'cause' see PARA 853 note 1 ante.

2 For the meaning of 'party' see PARA 853 note 6 ante.

3 For the meaning of 'judge' see PARA 844 note 2 ante.

4 Prize Court Rules 1939, SR & O 1939/1466 Ord 7 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. A person becoming a party after the filing of a petition, after making a claim, or by the leave of the judge, is entitled to a copy of the petition and must within seven days of its receipt plead to it: Ord 7 r 5.

5 'Solicitor' means any solicitor, attorney, or proctor entitled to practise in the court, and the proper officer of the Crown: Ord 1 r 1.

6 Ibid Ord 7 r 2. 'Counsel' includes any barrister-at-law, advocate or other person entitled to practise and have audience in the court: Ord 1 r 1. For forms of pleading see App A Form 13(i)-(iv). On the application of any party by summons, the judge may order particulars in writing of any allegations contained in any pleading or other document to be delivered by a party upon such terms as he thinks fit: Ord 8. For forms of order and particulars see App A Forms 14, 15. Pleadings and other documents may in general be either written, typed or printed as may be most convenient: see Ord 25 r 1. As to printing and provision of office copies of depositions, pleadings, affidavits and all other documents see Ord 25 rr 2, 3.

7 Ibid Ord 7 r 3. If a party unreasonably withholds his consent he is liable to be condemned in the costs occasioned by his refusal: Ord 7 r 3.

8 Ibid Ord 7 r 4.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/860. Subpoenas.

860. Subpoenas.

Any person desiring to compel the attendance of a witness for the purpose of either giving evidence or of producing a document may serve him with a subpoena which is prepared by the party¹ and issued under the seal of the court². The forms of subpoena are such as are for the time being in force in the exercise of its ordinary jurisdiction by the High Court³ or other court⁴ having prize jurisdiction, as the case may be⁵.

1 For the meaning of 'party' see PARA 853 note 6 ante.

2 See the Prize Court Rules 1939, SR & O 1939/1466, Ord 24 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

3 'High Court' means the High Court of Justice in England acting in the exercise of prize jurisdiction: *ibid* Ord 1 r 1.

4 'Court' means the High Court and certain other courts being a court for the time being duly authorised to exercise prize jurisdiction: see *ibid* Ord 1 r 1.

5 *Ibid* Ord 24 r 1. As to subpoenas in the High Court see CIVIL PROCEDURE vol 11 (2009) PARA 1003 et seq. A subpoena may contain the names of any number of witnesses, or may be issued with the names of the witnesses in blank: Ord 24 r 2. Service must be personal, must be made by the party or his agent, and must, if necessary, be proved by affidavit: Ord 24 r 3. Refusal or neglect to act on or give evidence on attendance on a subpoena is deemed to be contempt of court and is dealt with accordingly: Ord 24 r 4; and see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 476. See also PARA 874 text and note 14 post.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(i) Rules and Preliminary Procedure/861. Affidavits.

861. Affidavits.

Every affidavit¹ must be intituled in the cause² or matter in which it is sworn or, if sworn before the commencement of a cause, must be headed with the name of the captured ship or aircraft³. It must be in the first person, must be divided into short numbered paragraphs and must be signed by the deponent⁴, whose name, address and description must be inserted in it⁵. Provision is made for the making of affidavits by persons who are blind or illiterate⁶ or who do not speak English⁷. An affidavit may be sworn: (1) within the jurisdiction before the judge⁸, registrar⁹, commissioner or other person empowered under the Prize Court Rules 1939 to administer oaths¹⁰; (2) out of the jurisdiction but within Her Majesty's dominions before any person authorised to administer oaths there¹¹; and (3) elsewhere before prescribed persons¹². Before being used in evidence an affidavit must be filed in the registry¹³ together with all the exhibits, and a copy must be served on the other parties¹⁴ to the cause¹⁵.

1 For the form heading and jurat to an affidavit see the Prize Court Rules 1939, SR & O 1939/1466, App A Form 49. A jurat is a short statement at the foot of an affidavit stating when where and before whom it was sworn. For other forms of jurat see CIVIL PROCEDURE vol 11 (2009) PARA 990. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

2 For the meaning of 'cause' see PARA 853 note 1 ante.

3 Prize Court Rules 1939, SR & O 1939/1466, Ord 21 r 1. Thus in the case of a ship the name of the ship must be given, and in the case of an aircraft the word 'Aircraft' followed by the nationality and registration marks: see Ord 21 r 1. For the meaning of 'ship' see PARA 803 note 4 ante.

4 *Ibid* Ord 21 r 1.

5 *Ibid* Ord 21 r 2. Where an affidavit is made by two or more persons, their names and the dates when and places where it is sworn must be inserted in the jurat: Ord 21 r 2. For the form of jurat see App A Form 49.

6 In this event the person before whom the affidavit is sworn must certify that it was read over to the deponent and that the deponent appeared to understand it and made his mark or signed it in the presence of the person before whom it was sworn: *ibid* Ord 21 r 3.

7 In this case the affidavit must be taken down and read over to the deponent by interpretation of a person previously sworn faithfully to interpret it: *ibid* Ord 21 r 4.

8 For the meaning of 'judge' see PARA 844 note 2 ante.

9 As to the registrar see PARA 854 note 2 ante.

10 Prize Court Rules 1939, SR & O 1939/1466, Ord 21 r 5. As to the persons empowered to administer oaths see PARA 857 note 5 ante. Objection to the reception of an affidavit may be made if it was sworn before the solicitor for the party tendering it, or that solicitor's partner or clerk: Ord 21 r 7. For the meaning of 'solicitor' see PARA 859 note 5 ante. For the meaning of 'court' see PARA 860 note 4 ante. For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante.

11 Ibid Ord 21 r 6(1); and see CIVIL PROCEDURE vol 11 (2009) PARAS 1026-1027.

12 See ibid Ord 21 r 6(2), which refers to any person authorised to administer oaths under the Commissioners for Oaths Act 1889 s 4 (under which the Lord Chancellor, when it appears to him necessary, may authorise any person to administer oaths and take affidavits for any purpose relating to prize proceedings in the Supreme Court whilst that person is on the high seas or out of Her Majesty's dominions) or s 6 (see CIVIL PROCEDURE vol 11 (2009) PARA 1027), or under the Commissioners for Oaths Act 1891 s 2, or under the Commissioners for Oaths (Prize Proceedings) Act 1907 (repealed) or a notary public, or a judge or magistrate. The signature of a notary public, judge or magistrate must be authenticated by the official seal of the court to which he is attached or of the Supreme Court of the country where the affidavit is sworn or by the certificate of a consular officer: Prize Court Rules 1939, SR & O 1939/1466, Ord 21 r 6(2). 'Consular officer' includes any consul-general, consul, vice-consul, consular agent, and any person for the time being authorised to discharge the duties of consul-general, consul or vice-consul: Ord 1 r 1.

13 As to the registry see PARA 854 note 2 ante.

14 For the meaning of 'party' see PARA 853 note 6 ante.

15 Prize Court Rules 1939, SR & O 1939/1466, Ord 21 r 8.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(ii) Appearance, Claims and Interlocutory Proceedings/862. Appearance and claims.

(ii) Appearance, Claims and Interlocutory Proceedings

862. Appearance and claims.

Any person desiring to enter an appearance in a cause¹ must do so² in the registry³ within 30 days⁴ after service of the writ or, by leave of the court⁵, at any time before final adjudication⁶, and he may then make a claim in a prescribed form⁷. Where no appearance has been entered the party issuing the writ may proceed in the cause subject to filing an affidavit of service of the writ⁸.

1 For the meaning of 'cause' see PARA 853 note 1 ante.

2 For a form of appearance see the Prize Court Rules 1939, SR & O 1939/1466, App A Form 8. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. A person entering an appearance must give notice of it to the party issuing the writ: Ord 3 r 2. Where a person has no usual place of residence or business within the jurisdiction, appearance may be entered for him by the master of the ship or aircraft or some other authorised agent: Ord 3 r 3. For the meaning of 'party' see PARA 853 note 6 ante. For the meaning of 'ship' see PARA 803 note 4 ante.

3 As to the registry see PARA 854 note 2 ante.

4 A different time may be limited by the Prize Court Rules 1939, SR & O 1939/1466, Ord 2 r 18 (see PARA 856 note 4 ante), where leave is given for service out of the jurisdiction. In any event time may be enlarged under Ord 38: see PARA 853 ante.

5 For the meaning of 'court' see PARA 860 note 4 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 3 r 1. He thereupon becomes a party: Ord 3 r 1.

7 Ibid Ord 3 r 4. The forms are in App A Form 9, and cover: (1) claim by master; (2) claim by agent; (3) claim by managing owner; (4) claim by master and sole owner; (5) claim by neutral government; (6) claim for droit of Admiralty on seizure in port; and (7) claim for droit of Admiralty on capture by noncommissioned ship. For the meaning of 'owner' see PARA 844 note 3 ante.

8 Ibid Ord 3 r 6. For a form of affidavit of service see App A Form 10.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(ii) Appearance, Claims and Interlocutory Proceedings/863. Claim by alien enemy.

863. Claim by alien enemy.

An alien enemy¹ may not make a claim and cannot be heard² unless he obtains the licence of the Crown³ or his claim is based on some ground such as treaty, international convention, cartel or pass⁴, which enables him to sustain a capacity to sue and be sued⁵. Before entering an appearance an enemy alien must file an affidavit in the registry⁶ stating the grounds of his claim⁷.

1 For the meaning of 'alien enemy' see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 574.

2 *The Glenroy* [1943] P 109.

3 *The Mowe* [1915] P 1 at 8, citing claims where days of grace were allowed to enemy's ships by Orders in Council.

4 *The Chile* [1914] P 212; *The Marie Glaeser* [1914] P 218; *The Mowe* [1915] P 1 (claim under Hague Conventions).

5 There is no discretion in the Prize Court to extend the exceptions to the general disability of enemy status beyond what was settled during the 1914-18 war: *The Glenroy* [1943] P 109 at 114-115. As to the Prize Court see PARA 847 et seq ante.

6 As to the registry see PARA 854 note 2 ante.

7 Prize Court Rules 1939, SR & O 1939/1466, Ord 3 r 5. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(ii) Appearance, Claims and Interlocutory Proceedings/864. Applications by joint captors.

864. Applications by joint captors.

Any person claiming a share as a joint captor¹ may, at any time after the institution of a cause² relating to a ship³ or aircraft in which he claims a share, intervene as petitioner⁴ by instituting a cause of joint capture⁵.

If the cause is instituted before condemnation of the ship or aircraft, the petitioner must give security and file a petition⁶. If the cause is instituted after condemnation, the judge⁷, on sufficient cause being shown, must allow the writ to be served on the party⁸ to whom the ship or aircraft has been condemned, or in prize salvage on the captors⁹. The respondent must enter an appearance within the time named in the writ¹⁰.

If the respondent wishes to contest the petitioner's right to a share, he must file an answer, or if he admits the petitioner's share he must file an admission¹¹, and when this has been done the petition must be heard on a day appointed by the registrar¹², upon the application of either party, upon such evidence as the judge thinks fit¹³.

If in a cause instituted against a ship or aircraft for condemnation as prize¹⁴, or in a cause for prize salvage, a cause of joint capture is instituted before condemnation or adjudication, the judge may, at the hearing of the principal cause, upon condemnation of the ship or aircraft a lawful prize to the Crown, determine the title of the petitioner to share¹⁵. Where in such proceedings the title or interest of the person instituting them is denied by any other party who asserts that he has as captor the sole title or interest in the prize, or prize salvage, proceedings may be taken for the purpose of determining the title or interest in the same manner as is provided for determining the title and interest in a claim of joint capture, except that the petitioner need not give any security or pay any costs unless ordered by the judge and the petition must be filed within ten days after the cause is instituted by the petitioner¹⁶.

All other applications to share in prize proceeds or prize salvage must be made by motion unless the judge otherwise directs¹⁷.

1 For the meaning of 'captor' see PARA 853 note 5 ante.

2 For the meaning of 'cause' see PARA 853 note 1 ante.

3 For the meaning of 'ship' see PARA 803 note 4 ante.

4 'Petitioner' includes, for the purposes of the proceedings in any cause or matter the petitioner's solicitor: Prize Court Rules 1939, SR & O 1939/1466, Ord 1 r 1. For the meaning of 'solicitor' see PARA 859 note 5 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

5 Ibid Ord 32 r 1(1). For a form of writ see App A Form 6.

6 See ibid Ord 32 r 1(2). The security, enough to contribute to the actual captors a just proportion of any costs, charges, expenses or damages that may be incurred by or awarded against them, must be given within six days of the issue of his writ by the petitioner, unless he is a flag officer claiming by virtue of his flag; and within ten days of doing this the petitioner must file his petition in the registry setting out the material facts on which he bases his claim: Ord 32 r 1(2). A flag officer may not make his claim until after condemnation and must then make it in the same form and manner as in cases of asserted joint capture: Ord 32 r 7. A flag officer is not required to pay costs or give security for costs: Ord 32 r 7 proviso. As to the registry see PARA 854 note 2 ante.

7 For the meaning of 'judge' see PARA 844 note 2 ante.

8 For the meaning of 'party' see PARA 853 note 6 ante.

9 See the Prize Court Rules 1939, SR & O 1939/1466, Ord 32 r 1(3). In this case also security must be given and a petition filed (see note 6 supra): Ord 32 r 1(3), (4).

10 Ibid Ord 32 r 1(5). For a form of appearance see App A Form 8.

11 Ibid Ord 32 r 2. For forms of answer and admission see App A Form 13(iii). As to filing see PARA 854 note 6 ante. A copy of every pleading must be served on every opposing party: Ord 32 r 2.

12 As to the registrar see PARA 854 note 2 ante.

13 Prize Court Rules 1939, SR & O 1939/1466, Ord 32 r 3.

14 Except with special leave of the judge, no party may be admitted to claim to share as a joint captor unless he institutes his cause and files his petition within six months from the date when the judge pronounced any other party entitled to such prize, or prize salvage: Ord 32 r 6.

15 Ibid Ord 32 r 4. For forms of decree in joint capture see App A Form 53(xviii)-(xxi). Costs of the petition must be paid by either party as the judge directs or be paid out of the proceeds of the ship or aircraft if condemned: Ord 32 r 5.

16 See *ibid* Ord 32 r 8.

17 *Ibid* Ord 32 r 9.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(ii) Appearance, Claims and Interlocutory Proceedings/865. Proceedings on failure by captors to proceed.

865. Proceedings on failure by captors to proceed.

Where a ship¹ or aircraft has been and still remains detained, whether captured as prize or not, and no cause² is instituted against it within one month from the time it is so taken or seized, a claimant³, after issuing a writ⁴, may apply for an order for the release of the ship or aircraft and its restoration to him⁵; and any person interested in a ship or aircraft may, without issuing a writ, provided he does not intend to claim restitution or damages, apply by summons for an order that the captors⁶ proceed to adjudication⁷.

Where a ship or aircraft has been captured as prize, but has been subsequently released by the captors, or has, by loss, destruction or otherwise, ceased to be detained by them without proceedings for condemnation having been taken, any person interested who wishes to make a claim for costs and damages in respect of it must issue a writ⁸.

Where after a cause has been instituted, the captors fail to take any of the steps within the respective times provided by the Prize Court Rules 1939 or, in the opinion of the judge, fail to prosecute with effect the proceedings for adjudication, he may, upon the application of a claimant who has entered an appearance⁹, order the ship or aircraft to be released and restored to the claimant, and may make such order as to costs and damages as he thinks fit¹⁰.

1 For the meaning of 'ship' see PARA 803 note 4 ante.

2 For the meaning of 'cause' see PARA 853 note 1 ante.

3 'Claimant' means any person who asserts a claim to a ship, aircraft or goods taken or seized as prize, or to compensation, and for the purposes of proceedings in any cause or matter includes the claimant's solicitor, if any: Prize Court Rules 1939, SR & O 1939/1466, Ord 1 r 1. For the meaning of 'solicitor' see PARA 859 note 5 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

4 *Ie* as provided by *ibid* Ord 2: see PARA 854 ante.

5 *Ibid* Ord 5 r 1. On such an application the judge may make such order as he thinks fit as to the restoration of the ship or aircraft and as to damages, costs or proceedings to judgment: Ord 5 r 1. For the meaning of 'judge' see PARA 844 note 2 ante.

6 For the meaning of 'captor' see PARA 853 note 5 ante.

7 Prize Court Rules 1939, SR & O 1939/1466, Ord 5 r 4. See *France Fenwick Tyne and Wear Co Ltd v Procurator General, The Prins Knud* [1942] AC 667 at 675, [1942] 2 All ER 453 at 456, PC.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 5 r 2. The writ to be issued is as provided by Ord 2: see PARA 854 ante.

9 *Ie* under *ibid* Ord 3: see PARA 862 ante.

10 *Ibid* Ord 5 r 3.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(ii) Appearance, Claims and Interlocutory Proceedings/866. Interlocutory proceedings.

866. Interlocutory proceedings.

Interlocutory applications made in court must be made by motion; those made in chambers must be made by summons¹. With certain exceptions the registrar² may transact the business in chambers³, and any party affected by an order or decision made by him may appeal to the judge by summons⁴.

Every notice of motion or summons must be served upon the adverse party at least 24 hours before the date of its return unless, by consent of the adverse party, or by order of the judge, the time for service is shortened⁵.

When the motion or summons comes on for hearing the judge, after hearing the parties, or, in the absence of any of them, on proof that the notice of motion or summons has been duly served⁶, may make such order as he deems right⁷.

1 Prize Court Rules 1939, SR & O 1939/1466, Ord 20 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. Every application, including, if the judge thinks fit, one made ex parte in chambers, may, unless the Prize Court Rules 1939 expressly direct otherwise, be made by summons in chambers, but a summons may be adjourned by the judge into court: Ord 20 rr 2, 7. For forms of notice of motion and summons see App A Forms 47, 48. For the meaning of 'judge' see PARA 844 note 2 ante. For the meaning of 'court' see PARA 860 note 4 ante.

2 As to the registrar see PARA 854 note 2 ante.

3 Prize Court Rules 1939, SR & O 1939/1466, Ord 20 r 8. The registrar may only transact such business and exercise such authority and jurisdiction in prize as he has power to transact and exercise in matters arising out of the court's ordinary jurisdiction, and on the request of the party in any application heard by him the matter may be heard by a judge: Ord 20 r 8 proviso. Furthermore, the registrar may never transact business in matter relating to the liberty of the subject or attachments, or the awarding of costs other than those relating to the proceedings before him or costs which he is authorised by the Prize Court Rules 1939 or a judge to award: Ord 20 r 8. As to requisition by the Admiralty see Ord 29 rr 1-8; and *The Gudrum Maersk* (1940) 1 Lloyd Pr Cas NS 42, Bombay HC. In any case of requisition of a ship or aircraft in respect of which no cause has been instituted, an application may be made for an order that the amount to be paid in respect of the ship or aircraft is to be fixed by the court: see the Prize Court Rules 1939, SR & O 1939/1466, Ord 29 r 8. For the meaning of 'party' see PARA 853 note 6 ante. For the meaning of 'cause' see PARA 853 note 1 ante. For the meaning of 'ship' see PARA 803 note 4 ante.

4 Prize Court Rules 1939, SR & O 1939/1466, Ord 20 r 9. Such an appeal must be made within three days after the order appealed from (Ord 20 r 9) and, unless the judge or registrar so orders, is not a stay of proceedings (Ord 20 r 11). The judge may vary or rescind the registrar's order: Ord 20 r 10.

5 Ibid Ord 20 r 3. Every notice of motion or summons must state the nature of the order desired and the day on which the application is to be made: see Ord 20 r 4.

6 Although no motion or summons may be heard without previous notice or service on the parties affected, the judge, if satisfied that delay caused by proceedings in the usual way might entail irreparable or serious mischief, may make any order ex parte upon any terms he sees fit, and any party affected by the order may move to set it aside: Ord 20 r 6.

7 Ibid Ord 20 r 5.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iii) Orders affecting Prize/867. Custody, inspection, appraisalment and sale.

(iii) Orders affecting Prize

867. Custody, inspection, appraisalment and sale.

At any time on the application of the marshal¹ or any party², the judge³ may make such order as to the removal, safe custody or preservation of a ship⁴ or aircraft as he may think fit, and he may at any time order it to be appraised, if not already appraised⁵, and sold⁶. He may also, on the application of any party, order property under the arrest of the court⁷ or being the subject matter of a cause⁸ to be inspected by any party to the cause or by any person appointed by the court⁹.

The appraisalment and sale of a ship or aircraft, its removal and survey, and the unloading and warehousing¹⁰ of goods, must be effected by the marshal under the authority of a commission¹¹ obtained out of the registry¹² by the party who applied for the order¹³. As soon as he has executed the commission, the marshal must file it in the registry, together with a return showing how it was executed, and his accounts and vouchers¹⁴; and the registrar must on the application of any party review the marshal's accounts and report the amount he considers should be allowed¹⁵.

1 As to the marshal see PARA 855 note 2 ante.

2 For the meaning of 'party' see PARA 853 note 6 ante.

3 For the meaning of 'judge' see PARA 844 note 2 ante.

4 For the meaning of 'ship' see PARA 803 note 4 ante.

5 Where cargo had been appraised ex parte on an erroneous basis before condemnation, it was ordered to be valued again: *The Consul Olsson* [1920] P 43.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 11 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. Where a ship or aircraft is ordered to be sold the sale must be by public auction unless the judge for good cause otherwise orders, and the gross proceeds must be paid into court by the marshal: Ord 11 r 3. The conditions of sale usual in the case of a ship are set out in App A Form 26, but in the case of an aircraft they are in such terms as the judge may direct: Ord 11 r 3.

7 For the meaning of 'court' see PARA 860 note 4 ante.

8 For the meaning of 'cause' see PARA 853 note 1 ante.

9 Prize Court Rules 1939, SR & O 1939/1466, Ord 11 r 11.

10 Where the judge orders goods to be unladen, inventoried and warehoused, then, unless he otherwise orders, they must remain in the marshal's custody until sold or restored: *ibid* Ord 11 r 10.

11 *Ibid* Ord 11 r 2. For forms of commission and, in the case of ships, bills of sale by the marshal see App A Forms 23, 25. In the case of aircraft the contract of sale is in such terms as the judge directs: Ord 11 r 2. All costs and expenses incidental to orders issued under Ord 11 r 2 must in the first instance be borne by the party who applied for the order: Ord 11 r 9.

12 As to the registry see PARA 854 note 2 ante.

13 *Ibid* Ord 11 r 4.

14 *Ibid* Ord 11 r 5. For the forms of marshal's certificate and accounts see App A Forms 24, 27.

15 *Ibid* Ord 11 r 6. Any party to the cause may be heard on the review: Ord 11 r 6. On the application of any party by summons, the judge may review the registrar's decision (Ord 11 r 7), and may order the amount found due to the marshal to be paid to him (Ord 11 r 8). As to the registrar see PARA 854 note 2 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iii) Orders affecting Prize/868. Bail.

868. Bail.

No property in the custody of the court may be released on bail, or on payment into court¹ in lieu of bail, except by order of the judge or registrar². Bail is given by filing a bail bond², which must be signed by two sureties unless the judge or registrar orders that one surety will suffice³, and it must be taken before a commissioner⁴ authorised to administer oaths in court or before the registrar, or, by direction of the registrar, before a clerk in the registry⁵; and in every case the sureties must justify by affidavit⁶.

Where bail is given in a cause for condemnation, it must be deemed to be given and to be answerable not merely to the actual captors⁷, but to all parties having any rights in or against the property, including the Crown, and in respect of the decree of the court or of any court authorised to hear appeals from it⁸.

Whenever by an order of the judge bail is ordered to be estreated, the proper officer of the Crown⁹ must, unless the order directs otherwise, take all necessary steps to effect the estreatment¹⁰.

1 For the meaning of 'court' see PARA 860 note 4 ante.

2 Prize Court Rules 1939, SR & O 1939/1466, Ord 12 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. An application for release must be made in chambers by summons (see App A Form 48): Ord 12 r 2. The amount of the bail or the amount to be paid into court in lieu must be the full value of the property sought to be released, and, unless agreed, this value must be ascertained by appraisalment or in any other manner the judge or registrar directs: Ord 12 r 3. For the meaning of 'judge' see PARA 844 note 2 ante. As to the registrar see PARA 854 note 2 ante.

2 For a form of bail bond see *ibid* App A Form 28. Every party filing a bail bond must also deliver a copy of it to the registrar who must keep it available for inspection during office hours in the register of bail bonds (Ord 12 r 10), but no bail bond may without consent be filed until after the expiration of 24 hours from the time when a notice containing the names and addresses of the sureties and the commissioner has been served on the adverse solicitor (Ord 12 r 5, App A Form 30). A copy of this notice verified by affidavit must be filed with the bond: Ord 12 r 5. For the meaning of 'party' see PARA 853 note 6 ante. For the meaning of 'solicitor' see PARA 859 note 5 ante. As to filing see PARA 854 note 6 ante.

3 If the adverse party is not satisfied with the sufficiency of a surety, he may file a notice of objection (see *ibid* App A Form 31), and the surety must be cross-examined on his affidavit before the registrar, who must then report on his sufficiency: Ord 12 r 8. If the registrar's report is adverse, a new bail bond must be prepared: Ord 12 r 8.

4 No commissioner may take bail on behalf of any person for whom he, or any person in partnership with him, is acting as solicitor or agent: *ibid* Ord 12 r 6. For the meaning of 'solicitor' see PARA 859 note 5 ante.

5 As to the registry see PARA 854 note 2 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 12 r 4. For a form of affidavit of jurisdiction see App A Form 29. A commission or fee paid to a person becoming surety to a bail bond or otherwise giving security may, if it does not exceed in the aggregate £1 per cent on the amount in which bail was given, be recovered on taxation: Ord 12 r 7.

7 For the meaning of 'captor' see PARA 853 note 5 ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 12 r 9.

9 For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante.

10 Prize Court Rules 1939, SR & O 1939/1466, Ord 12 r 11. On receipt of a written application to effect estreatment, the marshal must produce the bail bond to the court or such officer of the court or such officer of the court as may be required by the proper officer of the Crown: Ord 12 r 11. As to the marshal see PARA 855 note 2 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iii) Orders affecting Prize/869. Arrest of property.

869. Arrest of property.

Where a ship¹ or aircraft is taken as prize and brought within the jurisdiction of the court² but is not delivered up to the marshal³, the judge⁴, after a claim has been made, and upon the application of the claimant⁵, may order a warrant for the arrest of the ship or aircraft to be issued⁶.

Where in any proceedings the Crown or any party⁷ other than the claimant satisfies the judge upon application that it is necessary that property seized as prize and now within the jurisdiction of the court should be within the custody of the court, the judge may order a warrant for the arrest of the property to be issued⁸.

1 For the meaning of 'ship' see PARA 803 note 4 ante.

2 For the meaning of 'court' see PARA 860 note 4 ante.

3 Every ship or aircraft so taken must be delivered up to the marshal (as to whom see PARA 855 note 2 ante), without bulk broken, or, if there is no marshal, to the principal customs officer at the port or, in the case of an aircraft, such person as the court may appoint, the ship or aircraft then remaining in his custody subject to the orders of the court: see the Naval Prize Act 1864 s 16 (amended by the Prize Act 1939 s 1(2), Schedule Pt I). Nothing in the Naval Prize Act 1864 s 16 (as amended) applies to ships of war or military aircraft taken as prize: Prize Courts (Procedure) Act 1914 s 1 (amended by the Statute Law Revision Act 1927; and the Prize Act 1939 Schedule Pt I). The Prize Court Rules 1939, SR & O 1939/1466, Ord 10 does not apply to ships of war or military aircraft: Ord 10 r 9. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

4 For the meaning of 'judge' see PARA 844 note 2 ante.

5 For the meaning of 'claimant' see PARA 865 note 3 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 10 r 1. No warrant may be issued except on the order of a judge and until an affidavit has been filed by the party applying for the warrant: Ord 10 r 3. As to the form and service of affidavits and warrants see Ord 10 rr 4-8, App A Forms 21, 22.

7 For the meaning of 'party' see PARA 853 note 6 ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 10 r 2. See also note 6 supra.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iii) Orders affecting Prize/870. Release of property.

870. Release of property.

Property in the custody of the court¹, whether under arrest or otherwise, may only be released under the authority of an instrument of release issued from the registry². A release must be issued at any time before adjudication upon the application of the proper officer of the Crown³, and may be issued at any time upon the order of the judge⁴. Unless there is a caveat⁵ outstanding against the release of the property, a release may also be issued in certain cases upon the order of the registrar⁶.

The release must be lodged by the applicant with the marshal⁷ who, if satisfied that any conditions imposed by the release have been fulfilled, and that any fees due to and charges

incurred by him or on his behalf in respect of the property have been paid, must, unless the release otherwise directs, order the property to be released at once⁸.

None of the foregoing rules applies to release on requisition⁹.

1 For the meaning of 'court' see PARA 860 note 4 ante.

2 Prize Court Rules 1939, SR & O 1939/1466, Ord 13 r 1. For an instrument of release see App A Form 32. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. As to the registry see PARA 854 note 2 ante. Unless so ordered by the judge, no release affects the right, if any, of the owners of captured property to costs and damages against the captor or the proper officer of the Crown: Ord 13 r 5. For the meaning of 'judge' see PARA 844 note 2 ante. For the meaning of 'captor' see PARA 853 note 5 ante. For the meaning of 'owner' see PARA 844 note 3 ante. For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante.

3 Ibid Ord 13 r 2. As to the prerogative right of the Crown to effect extra-judicial release, see *The Salerno* [1946] P 189; and PARAS 839 text and note 5, 842 note 7 ante.

4 Prize Court Rules 1939, SR & O 1939/1466, Ord 13 r 3.

5 As to caveats see PARA 871 post.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 13 r 4. A release may be issued by order of the registrar: (1) upon a consent (conditional or otherwise) being filed by the proper officer of the Crown (Ord 13 r 4(a)); (2) where proceedings instituted by or on behalf of the Crown are discontinued (Ord 13 r 4(b)); (3) where property has been ordered to be released on bail and bail has been given accordingly (Ord 13 r 4(c)); (4) where in proceedings for the recovery of prize salvage the parties claiming salvage discontinue their proceedings (Ord 13 r 4(d)) or bail or other security has been given for the amount of salvage claimed and costs (Ord 13 r 4(e)). As to the registrar see PARA 854 note 2 ante. As to release of property on bail see PARA 868 ante.

7 As to the marshal see PARA 855 note 2 ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 13 r 7. As soon as the property has been released the marshal must file a certificate (see App A Form 33), recording the release, the date upon which it was effected, whether it was absolute or only on bail, and if on bail, the amount of that bail: Ord 13 r 8.

9 Ibid Ord 13 r 9. The requisition referred to is a requisition on behalf of Her Majesty of a ship or aircraft in respect of which no final decree of condemnation has been made; such ship or aircraft, if required for Her Majesty's service forthwith, may be released immediately: see Ord 29 rr 1-8. See also PARA 820 ante. Release under Ord 13 is also not issued, unless the judge otherwise directs, where property has been arrested for prize salvage (see PARA 842 et seq ante), except on discontinuance or dismissal of the proceedings, until the value of the arrested property has been agreed or ascertained: Ord 13 r 6.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iii) Orders affecting Prize/871. Caveats.

871. Caveats.

A notice applying for a caveat¹ must be filed in the registry² by any person having any interest in or claim against any property in the custody of the court³ who desires to prevent its release⁴, or any person having any interest in or claim against any money in court who desires to prevent its payment out of court⁵.

A person at whose instance a caveat is entered will be condemned to pay all costs or damages occasioned by the issue of the caveat unless he shows to the judge⁶ good and sufficient reason for such an entry⁷.

Where a ship⁸ or aircraft is subject to a claim for prize salvage⁹ but is not under arrest, a notice of caveat against arrest may likewise be filed in the registry by the person desiring to prevent the arrest, but in this case the notice must contain an undertaking to enter an appearance in any cause for the recovery of prize salvage, and in such cause to give bail in a sum not

exceeding an amount to be stated in the notice or to pay that sum into the registry¹⁰. Such a caveat does not, however, prevent the issue of a warrant for the arrest of the property, but the person at whose instance such a warrant is issued may be condemned to pay all the costs and damages occasioned by it¹¹.

The judge may overrule any caveat¹², but no caveat in any case remains in force for more than six months from the date upon which it was entered¹³, and may be withdrawn at any time by the person at whose instance it was entered¹⁴.

1 For forms of notice and caveat see the Prize Court Rules 1939, SR & O 1939/1466, App A Forms 34-37. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

2 As to the registry see PARA 854 note 2 ante. As to filing see PARA 854 note 6 ante. When the notice has been filed the registrar must enter the caveats in the caveat release book or the caveat payment book kept under ibid Ord 41 r 3: Ord 14 rr 1, 2. If the person entering a caveat is not a party to the cause, he must state in the notice his name and address and also an address within three miles of the registry where documents required to be served on him may be left, and unless he enters an appearance (see PARA 862 ante) the caveat will cease to be effective: Ord 14 r 3. As to the registrar see PARA 854 note 2 ante. For the meaning of 'party' see PARA 853 note 6 ante. For the meaning of 'cause' see PARA 853 note 1 ante.

3 For the meaning of 'court' see PARA 860 note 4 ante.

4 Prize Court Rules 1939, SR & O 1939/1466, Ord 14 r 1. In this case the caveat is known as a 'caveat release'.

5 Ibid Ord 14 r 2. In this case the caveat is known as a 'caveat payment'.

6 For the meaning of 'judge' see PARA 844 note 2 ante.

7 Prize Court Rules 1939, SR & O 1939/1466, Ord 14 r 4.

8 For the meaning of 'ship' see PARA 803 note 4 ante.

9 As to prize salvage see PARA 842 et seq ante.

10 Prize Court Rules 1939, SR & O 1939/1466, Ord 14 r 5. For forms of notice and of caveat warrant see App A Forms 38, 39. The registrar must enter these caveats in the caveat warrant book kept under Ord 41 r 3: Ord 14 r 5. Where such a caveat has been entered, any party taking prize salvage proceedings must serve a copy of the writ instituting the proceedings upon the party on whose behalf the caveat was entered, and that person must within three days of service of the writ, if the sum claimed does not exceed the amount for which he has undertaken, give bail or pay the sum claimed into the registry: Ord 14 r 6. If he fails to do so the caveat may be overruled: Ord 14 r 7.

11 Ibid Ord 14 r 8. Such a person will be condemned to pay costs and damages unless he can satisfy the judge that there is good and sufficient reason for the issue of a warrant of arrest: Ord 14 r 8.

12 Ibid Ord 14 r 11.

13 Ibid Ord 14 r 9.

14 Ibid Ord 14 r 10. Withdrawal of a caveat is effected by the filing of a notice in the form set out in App A Form 40, withdrawing it: Ord 14 r 10.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iv) The Hearing; References/872. Evidence on which causes are heard.

(iv) The Hearing; References

872. Evidence on which causes are heard.

A cause¹ for the condemnation of a ship of war² or a military aircraft³ is heard upon the affidavits as to ship or aircraft papers⁴, and the ship or aircraft papers, if any, exhibited to them⁵, either alone or on such other evidence as the judge may direct⁶. A cause for the condemnation of a ship⁷ or aircraft, other than a ship of war or a military aircraft, is heard upon⁸:

- 1 (1) the affidavit as to ship or aircraft papers and the ship or aircraft papers, if any, exhibited to it⁹;
- 2 (2) the affidavits¹⁰ of the officers of the ship or aircraft concerned in the capture¹¹;
- 3 (3) the depositions of the witnesses, if any, examined before the hearing¹²;
- 4 (4) the evidence of witnesses at the hearing, whether on behalf of the captors or of any other party¹³; and
- 5 (5) any further evidence which may be admitted by the judge¹⁴.

No ship or aircraft may be condemned at the hearing in the absence of an appearance or claim¹⁵ until six months have elapsed from the service of the writ¹⁶, unless there is on the ship papers or aircraft papers and on the evidence, if any, of the witnesses from the captured ship or aircraft, sufficient proof that the ship or aircraft belongs to the enemy, or is otherwise liable to condemnation¹⁷.

1 For the meaning of 'cause' see PARA 853 note 1 ante.

2 For the meaning of 'ship of war' see PARA 845 note 9 ante.

3 For the meaning of 'military aircraft' see PARA 845 note 10 ante.

4 As to the swearing and filing of these affidavits see PARA 854 ante. For the meaning of 'ship papers' and 'aircraft papers' see PARA 834 note 3 ante.

5 Where any ship papers or aircraft papers or other documents have to be translated for use in a cause, the translation must be made either by an interpreter appointed by the party seeking to use the translation, or, if necessary, a person appointed by the judge, and the parties to any proceeding may agree, or where the Crown or captor is the only party, the proper officer of the Crown may direct, which or what parts of the papers or documents are to be translated: Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 21. For the meaning of 'party' see PARA 853 note 6 ante. For the meaning of 'judge' see PARA 844 note 2 ante. For the meaning of 'captor' see PARA 853 note 5 ante. For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

6 Ibid Ord 15 r 1. Any party in any cause may by leave of the judge at the hearing invoke and give in evidence the ship papers or aircraft papers brought in and filed in any other cause: Ord 15 r 10.

7 For the meaning of 'ship' see PARA 803 note 4 ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 2.

9 Ibid Ord 15 r 2(a).

10 As to affidavits see PARA 861 ante.

11 Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 2(b). The court is not bound to require the best official evidence of a capture, but may make use of other information: *The Berlin* [1914] P 265; *The Kim, The Alfred Nobel, The Björnsterjine Björnson, The Fridland* [1915] P 215 at 250, 251.

12 Prize Court Rules 1939, Ord 15 r 2(c). This applies whether such witnesses belong to the captured ship or aircraft or are tendered on behalf of the captor or of any party: Ord 15 r 2(c).

13 Ibid Ord 15 r 2(d).

14 Ibid Ord 15 r 2(e).

15 As to appearance and claims see PARA 862 ante.

16 The service must be certified by an affidavit of service: Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 9. For a form of affidavit of service see App A Form 10.

17 Ibid Ord 15 r 9; see also *The Benmacdhu* (1940) 1 Lloyd Pr Cas NS 6; *The Bianca* (1940) 1 Lloyd Pr Cas NS 9; *The Gloria* (1940) 1 Lloyd Pr Cas NS 11. The inference that condemnation after six months is permissible in all cases should probably not be drawn from this rule, as it is doubtful whether a municipal rule of procedure can effect a curtailment of the period of a year and a day recognised by the usage of nations: *The Alwaki* [1940] P 215.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iv) The Hearing; References/873. The hearing.

873. The hearing.

The judge¹ may make such order as he thinks fit as to the hearing of the cause², the bringing of claims³, pleadings⁴, discovery by interrogatories⁵, discovery and inspection of documents⁶ or any other matter upon such terms as the case may require⁷.

Where in any cause, whether for condemnation or otherwise, claims have been made by two or more parties, the judge, on the application of any party, may make an order for the hearing of one or some of such claims in priority to the other or others⁸, and, where two or more causes are pending, the judge, on the application of any of the parties to them, may order that they or such of them as are specified in the order be consolidated⁹.

At the hearing of a cause the party by whom it has been instituted begins unless the judge otherwise orders, and, where there are several claimants¹⁰, the judge directs which is to begin¹¹.

1 For the meaning of 'judge' see PARA 844 note 2 ante.

2 When a day has been fixed for the hearing of a cause the registrar must send notice to all the parties that the cause will be held on that day: Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 7. For the meaning of 'cause' see PARA 853 note 1 ante. As to the registrar see PARA 854 note 2 ante. For the meaning of 'party' see PARA 853 note 6 ante.

Notices from the registry may be either left at or posted to the address for service of the party to whom the notice is to be given; and the time at which the notice if posted would be delivered in the ordinary course is considered the time of service of it: Ord 36. As to the registry see PARA 854 note 2 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

3 As to claims see PARA 862 ante.

4 As to pleadings see PARA 859 ante.

5 Notwithstanding anything contained in the Prize Court Rules 1939, SR & O 1939/1466, the proper officer of the Crown may apply to the judge for leave to administer interrogatories for the examination of any person whether a party to the cause or not: Ord 15 r 22. For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante.

6 As to discovery and inspection see PARAS 857-858 ante.

7 Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 4. Records of the court are kept at the registry: see Ord 41.

8 Ibid Ord 15 r 5. Upon such a hearing the judge may make any decree, or any order he might have made if no other claims had been made, but he may, if he thinks fit, order the stay of any proceedings consequent thereon until the hearing of the other claim is completed: Ord 15 r 5.

9 Ibid Ord 15 r 6.

10 For the meaning of 'claimant' see PARA 865 note 3 ante.

11 Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 8. At the hearing of claims on joint capture, the persons claiming to be joint captors must begin: Ord 15 r 8.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iv) The Hearing; References/874. Examination of witnesses.

874. Examination of witnesses.

In any cause¹ where it appears necessary for the purpose of justice the judge² may make an order for examination, upon oath, before him or any officer of the court³ or any other person and at any place, of any witness or person⁴, and may empower any party⁵ to any such cause to give that deposition in evidence in it on any terms he may direct⁵.

If a witness is out of the jurisdiction of the court, the judge may order him to be examined before an examiner specially appointed for the purpose, or may order, in lieu of a commission, the issue of a request to examine him⁶. Any examination of any witness may be adjourned, if necessary, from time to time and from place to place, as the judge, registrar or examiner before whom the examination takes place directs⁷.

The judge may order any person within the jurisdiction of the court who has made an affidavit in a cause to attend for cross-examination on it before the judge⁸. Where witnesses are examined orally, the parties⁹, their counsel¹⁰, solicitors¹¹ or agents may attend the examination, and the witnesses must be examined, cross-examined¹² and re-examined in the order directed by the judge, registrar or examiner¹³.

Any person who wilfully disobeys any order or subpoena requiring his attendance for the purpose of being examined or cross-examined or producing any document, or on attending refuses to answer any proper question, is guilty of contempt of court and may be dealt with accordingly¹⁴.

1 For the meaning of 'cause' see PARA 853 note 1 ante.

2 For the meaning of 'judge' see PARA 844 note 2 ante.

3 For the meaning of 'court' see PARA 860 note 4 ante.

4 The evidence of every witness taken before the hearing must be taken down in writing and certified as correct by the judge, registrar or examiner or by a shorthand writer appointed by the judge, registrar or person examining or agreed upon by the parties: Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 12. The evidence must be lodged in the registry (Ord 15 r 13) and, once lodged, may be used in the cause (Ord 15 r 14). As to the registrar see PARA 854 note 2 ante. As to the registry see PARA 854 note 2 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

5 For the meaning of 'party' see PARA 853 note 6 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 3. When evidence is given at the hearing by oral examination of witnesses it may be taken down by a shorthand writer appointed by the judge and a transcript of it certified as correct must be admitted to prove oral evidence: Ord 15 r 15.

7 Ibid Ord 15 r 11. For forms of commission, and of a request or return to a commission to examine witnesses see App A Forms 41-43.

8 Ibid Ord 15 r 16.

9 Ibid Ord 15 r 17.

10 For the meaning of 'counsel' see PARA 859 note 6 ante.

11 For the meaning of 'solicitor' see PARA 859 note 5 ante.

12 The judge may disallow any questions put in cross-examination which appear to him to be vexatious or irrelevant: Prize Court Rules 1939, SR & O 1939/1466, Ord 15 r 19.

13 Ibid Ord 15 r 18. The judge, registrar or examiner may also put questions to the witnesses: Ord 15 r 18.

14 Ibid Ord 15 r 20. As to subpoenas see PARA 860 ante. As to contempt of court generally see CONTEMPT OF COURT.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iv) The Hearing; References/875. Assessors.

875. Assessors.

One or more Trinity Masters¹ or other assessors may on the application² of any party³, or without such application if the judge⁴ sees fit, be called in to advise the court⁵ upon any matters requiring nautical or other professional knowledge⁶.

1 The Trinity Masters are the Elder Brethren of Trinity House, who are the usual nautical assessors appointed in Admiralty actions: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 205.

2 An application must be made by letter or notice lodged in the registry six days at least before the attendance of the assessors is required: Prize Court Rules 1939, SR & O 1939/1466, Ord 16. As to the registry see PARA 854 note 2 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

3 For the meaning of 'party' see PARA 853 note 6 ante.

4 For the meaning of 'judge' see PARA 844 note 2 ante.

5 For the meaning of 'court' see PARA 860 note 4 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 16. The assessors' fees are paid in the first instance by the party on whose demand they are summoned: Ord 16.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iv) The Hearing; References/876. Discontinuance.

876. Discontinuance.

An order for discontinuance in respect of all or any part of the subject matter of a cause¹ may be allowed only by the leave of the judge². Notice of discontinuance³ must be served on all the other parties⁴ to the proceedings⁵.

1 For the meaning of 'cause' see PARA 853 note 1 ante.

2 Prize Court Rules 1939, SR & O 1939/1466, Ord 6. No order for discontinuance may be made or taken to prejudice the right, if any, of a claimant to costs and damages: Ord 6. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. For the meaning of 'judge' see PARA 844 note 2 ante. For the meaning of 'claimant' see PARA 865 note 3 ante.

3 See ibid App A Form 12.

4 For the meaning of 'party' see PARA 853 note 6 ante.

5 Prize Court Rules 1939, SR & O 1939/1466, Ord 6.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(iv) The Hearing; References/877. References.

877. References.

The judge¹ may refer the assessment of damages, the taking of accounts, or any other matter which he thinks fit, to the registrar², either with or without assessors³. When an order for the reference has been made or an agreement⁴ for a reference has been filed, the claimant⁵ must file the claim and vouchers, if any, and serve copies on the opposite party⁶, within 21 days⁷, and having done so he must either by summons or agreement obtain a day for the reference⁸ and lodge in the registry⁹ a notice praying to have the reference placed in the list for hearing with the stamps for the reference affixed to it¹⁰.

Evidence at the hearing of a reference may be given orally or by affidavit or by documents, and either party may apply to have the evidence taken down by a shorthand writer appointed by the court¹¹.

When a reference has been heard, the registrar must draw up a report¹² in writing of the result of the reference, showing any further particulars and reasons that may be necessary and whether any and what part of the costs of the reference should be allowed and to whom¹³. A party may object to this report¹⁴, and the objection is brought before the judge by motion or on pleadings consisting of a petition in objection to the report and an answer to it¹⁵.

1 For the meaning of 'judge' see PARA 844 note 2 ante.

2 As to the registrar see PARA 854 note 2 ante.

3 Prize Court Rules 1939, SR & O 1939/1466, Ord 17 r 1. See SHIPPING AND MARITIME LAW Vol 93 (2008) PARA 143. As to assessors see PARA 875 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

4 As to consent or agreement in writing becoming an order of the court upon filing see Ord 23.

5 For the meaning of 'claimant' see PARA 865 note 3 ante.

6 For the meaning of 'party' see PARA 853 note 6 ante.

7 Prize Court Rules 1939, SR & O 1939/1466, Ord 17 r 2.

8 At the time appointed for the reference, if any party is present, the reference must be proceeded with, but the registrar may adjourn the reference from time to time: *ibid* Ord 17 r 4.

9 As to the registry see PARA 854 note 2 ante.

10 Prize Court Rules 1939, SR & O 1939/1466, Ord 17 r 3.

11 *Ibid* Ord 17 r 5. The expense of a shorthand writer must in the first instance be borne by the party who applied for his services: Ord 17 r 5. The transcript of his notes, certified by him to be correct, must be admitted to prove the oral evidence of the witnesses on an objection to the registrar's report: Ord 17 r 5.

12 For a form of report see *ibid* App A Form 44. A claimant who has received notice from the registry that the report is ready must file it within six days and serve a notice of the filing on the opposite party and apply for an order confirming the report: Ord 17 r 7. For a form of order see App A Form 45. If he does not do so the adverse party may take up and file the report, and apply for its confirmation, or apply to the judge to have the claim dismissed: Ord 17 r 8.

13 *Ibid* Ord 17 r 6.

14 *Ibid* Ord 17 r 9. A notice of objection must be filed in the registry within 14 days of the filing of the report, and a copy of the notice served on the adverse party: Ord 17 r 9.

15 Ibid Ord 17 r 10. A notice of motion of objection, or a petition, must be filed within ten days from the filing of the notice of objection (see note 14 supra) and a copy served on the adverse party, and an answer must be filed within ten days from the service of the petition and a copy served on the adverse party: Ord 17 r 10. For forms of notice of motion and pleadings see App A Forms 13(iv), 47.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(v) Fees, Payments and Costs/878. Court fees.

(v) Fees, Payments and Costs

878. Court fees.

The fees to be taken in prize matters in courts other than Colonial Courts of Admiralty¹ are in accordance with the scale laid down in the Prize Court Rules 1939 and are normally taken by means of stamps². The fees to be taken in Colonial Courts of Admiralty authorised to exercise prize jurisdiction are fixed, collected and applied in the same manner as fees arising under the Colonial Courts of Admiralty Act 1890 in respect of the Admiralty business of these courts³.

Unless otherwise ordered by the judge⁴, no document may be filed⁵, no process issued, no decree or order made and no act done by the court or registrar until the fees due and payable have been paid into the registry⁶.

1 As to Colonial Courts of Admiralty see PARA 849 note 3 ante.

2 See the Prize Court Rules 1939, SR & O 1939/1466, Ord 43 r 2(a) App B. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. The only fees not taken by stamps relate to delivering up a ship, aircraft or goods to a purchaser agreeable to the inventory (App B Fee 46) and to a sale pursuant to a decree or order of the court (App B Fee 49), and are paid by transfer from the proceeds in court to the account of fees on proceedings: Ord 43 r 2(a). For the meaning of 'ship' see PARA 803 note 4 ante. For the meaning of 'court' see PARA 860 note 4 ante.

3 Ibid Ord 43 r 2(b). The fees in respect of prize business do not come into operation until approved by Her Majesty in Council: by virtue of the Colonial Courts of Admiralty Act 1890 s 7 (as amended) (see COMMONWEALTH vol 13 (2009) PARA 838); and the Prize Courts Act 1894 s 3(4). Prize Court (Fees) Orders in Council giving the necessary approval are in operation in respect of the Falkland Islands (SR & O 1940/1780) and Gibraltar (SR & O 1940/604).

4 For the meaning of 'judge' see PARA 844 note 2 ante.

5 As to the mode of filing see PARA 854 note 6 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 43 r 3. As to the registry see PARA 854 note 2 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(v) Fees, Payments and Costs/879. Payment into and out of court.

879. Payment into and out of court.

All funds and money paid into the High Court¹ in prize matters are dealt with in the manner followed in the exercise of the court's ordinary jurisdiction². No money is paid out of court except by a decree or order of the judge³.

In causes⁴ instituted in a court other than the High Court all funds and money to be paid into court, and all securities to be placed to the credit of any such causes, must be transferred, paid

or placed to the account or credit of the proper officer of the court to whom such money is in the ordinary exercise of the court's jurisdiction paid, and must be placed by him to the credit of 'Prize Moneys' and of the particular ship⁵ or aircraft involved⁶.

1 For the meaning of 'High Court' see PARA 860 note 3 ante.

2 See the Prize Court Rules 1939, SR & O 1939/1466, Ord 26 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. As to funds in court generally see CIVIL PROCEDURE Vol 12 (2009) PARA 1548.

3 Ibid Ord 26 r 3. For the meaning of 'judge' see PARA 844 note 2 ante. As to interlocutory orders for security of costs see Ord 18 rr 2, 3; and PARA 880 post.

4 For the meaning of 'cause' see PARA 853 note 1 ante.

5 For the meaning of 'ship' see PARA 803 note 4 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 26 r 2. If there is no such officer the payments must be made to the registrar, who must open an account in a bank approved by the judge in respect of the particular ship or aircraft involved: Ord 26 r 2. As to the registrar see PARA 854 note 2 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(v) Fees, Payments and Costs/880. Costs and security for costs.

880. Costs and security for costs.

Except when otherwise provided by any agreement or by statute, the costs of and incident to all causes¹ are in the discretion of the judge².

Any person instituting a cause, other than a cause for condemnation, or making a claim, and being ordinarily resident out of the jurisdiction of the court³, may be ordered to give security for costs, even if he is temporarily resident within the jurisdiction, and the proceedings may be stayed until the security is given⁴.

A party⁵ desiring to have a bill of costs taxed must file it in the registry⁶. In all cases of taxation of costs the registrar⁷ is the taxing officer and the taxation must proceed in the High Court⁸, according to the law and practice governing the taxation of costs in the Admiralty jurisdiction of that court, and in any other court, according to the law and practice governing the taxation of costs in the ordinary jurisdiction of such court⁹.

1 For the meaning of 'cause' see PARA 853 note 1 ante.

2 Prize Court Rules 1939, SR & O 1939/1466, Ord 18 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. For the meaning of 'judge' see PARA 844 note 2 ante. The costs, charges and expenses to be allowed to practitioners in prize courts are set out in App C, and are subject to the same percentage increase as is provided for other bills of costs by the costs by the Rules of the Supreme Court 1883 Ord 65 r 10 (revoked except in relation to business done before 1 January 1960 by the Rules of the Supreme Court (No 3) 1959, SI 1959/1958): Prize Court Rules 1939, SR & O 1939/1466, Ord 43 r 4. As to the replacement of the Rules of the Supreme Court 1883 by the Rules of the Supreme Court 1965 and the subsequent replacement of the Rules of the Supreme Court 1965 by the Civil Procedure Rules 1998, SI 1998/3132 see CIVIL PROCEDURE. Although the court has power to award costs against the Crown (*The Zamora* [1916] 2 AC 77 at 111, PC), the general rule accords immunity to the Crown from costs in prize in all case where there were suspicious circumstances justifying the seizure and no oppressive or improper conduct on the part of the Crown (*The Baron Stjernblad* [1918] AC 173, PC; *The Gabbiano* [1940] P 166), and this rule applies whether the proceedings were brought to determine a question of principle or one of assignment of the amount of the claim (*The Panaghiotis* [1943] P 4, [1942] 2 All ER 525). The Crown is not entitled to a charging order in respect of unpaid costs in other causes in prize: *The Oranje Nassau* [1921] P 190.

3 For the meaning of 'court' see PARA 860 note 4 ante.

4 Prize Court Rules 1939, SR & O 1939/1466, Ord 18 r 2. In any cause in which security for costs is required, the security must be of such amount and be given at such times and in such manner or form, as by bond, payment into court or otherwise, as the judge directs: Ord 18 r 3.

5 For the meaning of 'party' see PARA 853 note 6 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 19 r 1. As to the registry see PARA 854 note 2 ante.

7 As to the registrar see PARA 854 note 2 ante.

8 For the meaning of 'High Court' see PARA 860 note 3 ante.

9 Prize Court Rules 1939, SR & O 1939/1466, Ord 19 r 2.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/881. Enforcement of decrees of condemnation.

(vi) Decrees, Enforcement and Appeals

881. Enforcement of decrees of condemnation.

Where the judge¹ condemns property as prize the decree of condemnation² may be enforced³:

- 6 (1) if the property is still under arrest, by the sale of the property⁴;
- 7 (2) if the property has been sold before condemnation and the proceeds have not already been paid into court, by order to the persons holding those proceeds to pay them into court⁵;
- 8 (3) in respect of freight found due for the carriage of goods⁶ in a ship⁷ or aircraft condemned as prize, by arrest of the goods so carried until payment into court of the freight or by order against the owner⁸ of the goods, or other persons holding, or responsible for, such freight, to pay it into court⁹;
- 9 (4) so far as the decree deals with costs and expenses, other than those ordered to be paid out of proceeds, by order against the parties ordered to pay them or their bail¹⁰; and
- 10 (5) if the property has been released on bail before condemnation, by order against the bail¹¹.

1 For the meaning of 'judge' see PARA 844 note 2 ante.

2 As to the effect of a sentence of condemnation see PARA 839 ante. For forms of order and decree see the Prize Court Rules 1939, SR & O 1939/1466, App A Forms 52, 53. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

3 Ibid Ord 27 r 1.

4 Ibid Ord 27 r 1(1). However, on the application of the proper officer of the Crown, the court must order the delivery of the property to the Crown in lieu of sale; and if at the time of the application the order for sale has already been made, but no sale has taken place, the order for sale must be rescinded: Ord 27 r 1(1) proviso. However, if the court thinks fit, the order for delivery to the Crown may be made subject to the payment by the Crown of any costs, expenses or other sums other than the fee provided for by App B No 49 (see PARA 878 note 2 ante), which might have been ordered to be paid out of the proceeds of the sale if the property had been sold under a court order: Ord 27 r 1(1) proviso. For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante. For the meaning of 'court' see PARA 860 note 4 ante.

5 Ibid Ord 27 r 1(2).

6 For the meaning of 'goods' see PARA 803 note 4 ante.

- 7 For the meaning of 'ship' see PARA 803 note 4 ante.
- 8 For the meaning of 'owner' see PARA 844 note 3 ante.
- 9 Prize Court Rules 1939, SR & O 1939/1466, Ord 27 r 1(3).
- 10 Ibid Ord 27 r 1(4). As to bail see PARA 868 ante.
- 11 Ibid Ord 27 r 1(5).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/882. Enforcement of decrees of restitution.

882. Enforcement of decrees of restitution.

Where the judge¹ decrees property taken or seized as prize to be restored to the owner², the decree must be carried out by means of a release³; and, if freight is due in respect of the cargo carried and payment is ordered, it may be enforced as against the cargo on the owners⁴:

- 11 (1) by payment out of the proceeds of the sale of the cargo if it has been condemned⁵;
- 12 (2) by payment out of the proceeds of sale still held in court where the cargo has been unladen and sold before adjudication⁶;
- 13 (3) by sale of the cargo and payment out of the proceeds where the cargo has been unladen but remains under arrest⁷;
- 14 (4) by order against the bail to pay the sum into court where the cargo has been unladen and restored to the owner on bail⁸; and
- 15 (5) where it has been unladen and restored without bail, by order against any person in possession of the cargo to pay the sum into court⁹.

1 For the meaning of 'judge' see PARA 844 note 2 ante.

2 For the meaning of 'owner' see PARA 844 note 3 ante.

3 Prize Court Rules 1939, SR & O 1939/1466 Ord 27 r 2. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante. The release is a release as prescribed by Ord 13: see PARA 870 ante. However, the judge may order the release on any terms as to cost and expenses that he thinks just, and if those terms are not complied with, or not complied with in time, he may direct the appraisal and sale of the property and the payment into court of the proceeds of the sale out of which the payments due must be made: Ord 27 r 2 proviso. For the meaning of 'court' see PARA 860 note 4 ante.

4 Ibid Ord 27 r 3.

5 Ibid Ord 27 r 3(1).

6 Ibid Ord 27 r 3(2).

7 Ibid Ord 27 r 3(3).

8 Ibid Ord 27 r 3(4).

9 Ibid Ord 27 r 3(5).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/883. Enforcement of other decrees and orders.

883. Enforcement of other decrees and orders.

Any decree or order other than a decree of condemnation or restitution, and not expressly provided for by the Prize Acts 1864 to 1944¹ or by the Prize Court Rules 1939², may be enforced by order against the parties³ against whom the decree or order is made, or in the same manner as a judgment, decree or order of the High Court⁴ in the exercise of its Admiralty jurisdiction, or in the case of any other court in the same manner as a judgment, decree or order in that court is ordinarily enforced⁵. The foregoing provisions as to enforcement⁶ apply to the enforcement by the Prize Court⁷ of decrees or orders of any other court or of the Judicial Committee of the Privy Council⁸.

1 As to these Acts see PARA 803 note 4 ante.

2 I.e. the Prize Court Rules 1939, SR & O 1939/1466. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

3 For the meaning of 'party' see PARA 853 note 6 ante.

4 For the meaning of 'High Court' see PARA 860 note 3 ante.

5 Prize Court Rules 1939, SR & O 1939/1466, Ord 27 r 4.

6 I.e. *ibid* Ord 27 rr 1-5: see the text and note 4 *supra*; and PARAS 881-882 ante.

7 As to the Prize Court see PARA 847 *et seq* ante.

8 Prize Court Rules 1939, SR & O 1939/1466, Ord 27 r 6. As to forms of orders and decrees see PARA 881 note 2 ante. As to the Judicial Committee of the Privy Council see PARAS 886-887 *post*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 311; COURTS.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/884. Certificates of sale, condemnation and restitution.

884. Certificates of sale, condemnation and restitution.

Where property taken or seized as prize is sold by order or decree of the court¹, or is restored to the owner² by order or decree, any person to whom the property is sold, or the owner of restored property, may within one month of the sale or the condemnation of the property, whichever is the later, or one month from the date of the order or decree of restitution, after notice to the proper officer of the Crown³, apply to the judge⁴ for an order directing the issue of a certificate of condemnation and sale, of sale only⁵ or of restitution as the case may be⁶.

1 For the meaning of 'court' see PARA 860 note 4 ante.

2 For the meaning of 'owner' see PARA 844 note 3 ante.

3 For the meaning of 'proper officer of the Crown' see PARA 853 note 4 ante.

4 For the meaning of 'judge' see PARA 844 note 2 ante.

5 Where such a certificate is issued in respect of a ship, aircraft, goods or cargo the applicant, on production to the registrar, in the case of a ship, of the bill of sale and, in respect of any aircraft, of the contract or sold note, is entitled to have a like certificate indorsed on it: Prize Court Rules 1939, SR & O 1939/1466, Ord 42 r 2. For the meaning of 'ship' see PARA 803 note 4 ante. For the meaning of 'goods' see PARA 803 note 4 ante. As to the registrar see PARA 854 note 2 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

6 Ibid Ord 42 rr 1, 3. The judge must cause such certificates to be issued unless good cause to the contrary is shown: Ord 42 rr 1, 3. For forms of certificate see App A Forms 61-66.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/885. Detention.

885. Detention.

Where it is held in a suit for condemnation that the ship¹ or aircraft is an enemy ship or aircraft, but in pursuance of some international convention or otherwise it is only liable to detention and not to condemnation, the decree must direct the marshal² to retain the ship or aircraft in his custody until further order³.

1 For the meaning of 'ship' see PARA 803 note 4 ante.

2 As to the marshal see PARA 855 note 2 ante.

3 Prize Court Rules 1939, SR & O 1939/1466, Ord 28 r 1. Where a decree of detention (see App A Form 53(ii), (iv)) has been made, the ship or aircraft must be kept at such port or place as the court may from time to time direct: Ord 28 r 2. For the meaning of 'court' see PARA 860 note 4 ante. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/886. Appeals.

886. Appeals.

An appeal lies to the Judicial Committee of the Privy Council¹ from any order or decree of a prize court², as of right in the case of a final decree³ and in other cases with the leave of the court making the order or decree⁴. The Judicial Committee has jurisdiction to hear and report on any such appeal, and may exercise in it all the powers appertaining to it in respect of Admiralty appeals⁵.

1 As to the Judicial Committee of the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 311; COURTS.

2 Where substantial injustice would otherwise result a prize court has inherent power to set aside its own orders or decrees: see PARA 840 ante. As to the Prize Court see PARA 847 et seq ante.

3 See *The Antilla* [1919] AC 250, PC.

4 Naval Prize Act 1864 s 5. As to applications for leave see PARA 887 post. No appeal lies to the Court of Appeal: Supreme Court Act 1981 s 16(2). Persons who were not the owners of goods at the time of their seizure as prize cannot maintain an appeal against their condemnation: see *The Kronprinzessin Cecilie* [1919] AC 964, PC. On an appeal from a prize court on facts the findings of the judge below are not conclusive but may be reviewed; the appeal is similar in nature and extent to an appeal to the Court of Appeal: see *The Ophelia* [1916] 2 AC 206, PC; and COURTS.

5 Naval Prize Act 1864 s 6. It may also exercise the powers vested by that Act in the High Court of Admiralty and the powers formerly exercised by the Commissioners of Appeal in prize cases: s 6. The commissioners' jurisdiction was transferred to the Queen in Council by the Judicial Committee Act 1833 s 2 (repealed).

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NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/PRIZE (VOLUME 36(2) (REISSUE))/2. EXERCISE OF PRIZE JURISDICTION/(2) PROCEDURE/(vi) Decrees, Enforcement and Appeals/887. Practice on appeals.

887. Practice on appeals.

Application to a court for the admission of an appeal to the Judicial Committee of the Privy Council¹ as of right, or for leave to appeal², must, if not made at the time when the judgment³ appealed from was delivered, be made by motion within seven days from the date of the judgment, and the applicant must give notice of the intended application to the opposite party⁴. An appeal is only admitted or leave to appeal granted: (1) upon the appellant, within a period fixed by the court⁵, entering, if required to do so, into sufficient security for the due prosecution of the appeal and for the payment of all such costs as may become payable to the respondent in the event of the appeal being dismissed for non-prosecution or the Judicial Committee ordering the appellant to pay the respondent's costs of the appeal⁶; and (2) upon such conditions as to the time within which the appellant is to take the necessary steps for the preparation and dispatch of the record⁷ as the court may impose⁸.

When admitting the appeal or granting leave to appeal, the court may either direct that the judgment be carried into execution, or that execution be suspended pending the appeal⁹. If the court directs the judgment to be executed, the person in whose favour it was given must enter into sufficient security for the performance of whatever order may be made by the Judicial Committee¹⁰.

As soon as the appeal has been admitted the appellant must take all necessary steps to have the record prepared forthwith¹¹, but at any time before the record is transmitted to the Judicial Committee he may withdraw his appeal on such terms as to costs or otherwise as the court may direct¹², or the appeal may be dismissed by the court, on the application of a respondent, for lack of due diligence in prosecution¹³. Where two or more appeals arise out of the same matter the court may direct the appeals to be consolidated¹⁴.

An appellant whose appeal has been admitted must prosecute his appeal in accordance with the rules regulating the practice and procedure in appeals to Her Majesty in Council¹⁵.

The court must enforce an order or judgment of the Judicial Committee in like manner as any judgment or order of the court¹⁶. Where a party is directed by the Judicial Committee to bear the costs of an appeal incurred in the court, taxation of costs is to be in accordance with the normal practice of the court¹⁷.

1 As to the Judicial Committee of the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 311; COURTS.

2 As to when leave is necessary see PARA 886 ante.

3 'Judgment' includes decree, order or decision: Prize Court Rules 1939, SR & O 1939/1466, Ord 44 r 1. As to the Prize Court Rules 1939, SR & O 1939/1466, see PARA 852 ante.

4 Ibid Ord 44 r 2. For the meaning of 'party' see PARA 853 note 6 ante.

5 For the meaning of 'court' see PARA 860 note 4 ante.

6 Prize Court Rules 1939, SR & O 1939/1466, Ord 44 r 3(a).

7 'Record' means the aggregate of papers relating to the appeal, including the pleadings, proceedings, evidence and judgment, proper to be laid before the Judicial Committee on the hearing of the appeal: ibid Ord 44 r 1. Unnecessary documents should be excluded from the record: see Ord 44 r 7.

8 Ibid Ord 44 r 3(b).

9 Ibid Ord 44 r 4.

10 Ibid Ord 44 r 4.

11 Ibid Ord 44 r 5. The record is prepared under the supervision of the court, to whom the parties may submit disputed questions concerning the record: Ord 44 r 6. As to printing the record see Ord 44 r 8. As to amending the record on the death or change of status of a party see Ord 44 r 12. Where the record is printed out of England the registrar must transmit to the registrar of the Privy Council forty printed copies, one of which must be sealed as correct, and when it is printed in England or is on an appeal from the High Court in England, one certified copy must be so transmitted, together with an index of all the papers and exhibits: Ord 44 r 8. As to the registrar see PARA 854 note 2 ante. As to the registrar of the Privy Council see COURTS. For the meaning of 'High Court' see PARA 860 note 3 ante.

12 Ibid Ord 44 r 10.

13 Ibid Ord 44 r 11. Alternatively the court may make such order as to costs or otherwise as it thinks fit: Ord 44 r 11.

14 Ibid Ord 44 r 9.

15 Ibid Ord 44 r 15. See also the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676 (as amended); and COURTS.

16 Prize Court Rules 1939, SR & O 1939/1466, Ord 44 r 14.

17 Ibid Ord 44 r 13. The costs must accordingly be taxed in accordance with Ord 19 r 2: see PARA 880 ante.

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NOTE 15--SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.